TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~285~~ 93

HENRY AMY

vs.

JOHN BURKHOLDER, HERMAN METZGAR, EDWARD JONES, BENJAMIN VAN DIKE, JOHN BRYSON, JUSTUS CLARK, WILLIAM WOLVERTON, JOHN INGHAM, JOHN W. BARNES, J. C. RANKIN, ROBERT KENDALL, AND FRED. HIZER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED NOVEMBER 16, 1869.

18

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A Supreme Court of the United States, December term, A. D. 1869.

HENRY AMY, PL'T'F IN ERROR,
vs.
JOHN BURKHOLDER, HERMAN METZGAR, Edward Jones, Benjamin Van Dyke, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, Ja's C. Rankin, Robert Kendall, & Frederick Heizer.
} In error to the district of Iowa.

Now comes the plaintiff, by James Grant, his att'y, and says that in the record and proceedings of the court there is error in this, to wit, that the court below erred in overruling the pl't'f's demurrer to the def'ts' answer.

Wherefore he prays that the said judgment may be reversed, with his cost, &c.

JA'S GRANT,
For Pl't'f in Error.

B Supreme Court of the United States.

To John Burkholder, Herman Metzgar, Edward Jones, Benjamin Vandike, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, James C. Rankin, & Robert Kendall:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at the term thereof to be held on the first Monday in December, 1869, to answer to a writ of error in said court to the circuit court of the United States for the district of Iowa, in a certain cause wherein Henry Amy is plaintiff and you are defendants, and show cause, if any you have, why said judgment should not be reversed.

J. M. LOVE,
Judge of the District Court of Iowa, & Presiding Judge of said court at the October term, 1869.

Due & legal service of this citation is accepted for the defendants in error, Oct. 21, 1869.

J. TRACY,
Attorney for Def'ts in Error.

(Indorsed:) Henry Amy v. John Burkholder & als. Citation & service. U. S. Sup. Court.

1 Pleas in the circuit court of the United States of America for the district of Iowa, held at the court-room in the city of Des Moines, in the district aforesaid, before the Honorable J. M. Love, district judge of said district, and in the absence pro tempore of the Honorable Samuel F. Miller, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Thursday, October 21st, A. D. 1869, the same being at the regular October term, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-fourth.

GEORGE B. CORKHILL, *Clerk.*

HENRY AMY
vs.
JOHN BURKHOLDER, HERMAN METZGAR, Edward Jones, Benjamin Van Dyke, John Bryson, Justus Clark, W'm Wolverton, John Ingham, John W. Barnes, J. C. Rankin, & Robert Kendall, & Fred. Heizer. } Action on the case.

Be it remembered that on the 31st day of March, A. D. 1869, came Henry Amy, by Messrs. Grant & Smith, his attorneys, and
2 filed in the office of the clerk of the circuit court of the United States for the district of Iowa, at Des Moines, in said district of Iowa, his præcipie for a writ of summons against John Burkholder, Herman Metzgar, Edward Jones, Benjamin Van Dyke, John Bryson, Justus Clark, William Wolverton, John Inghram, John W. Barney, J. C. Rankin, & Robert Kendall, Fred. Heizer, defendants, which said præcipie is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

HENRY AMY
vs.
JOHN BURKHOLDER, FREDRICK HEIZER, Herman Metzgar, Edward Jones, Benjamin Van Dyke, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, James C. Rankin, and Robert Kenall. } Action on the case.

The clerk will please issue summons in the above-entitled case in debt, $12,108 03; damages, $3,000; returnable to the May term of this court, A. D. 1869.

GRANT & SMITH &
C. WHITTAKER,
Pl'ff's Attorneys.

3 Endorsed: Filed March 31st, 1869.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the 31st day of March, A. D. 1869, a writ of summons issued out of said clerk's office against said defendants in said entitled cause; which said writ, together with the return of the marshal thereon, is in the words and figures following, to wit:

4 *Summons U. S. C. C.*

UNITED STATES OF AMERICA, *District of Iowa:*

To the marshal of the district of Iowa:

In the name of the President of the United States you are hereby commanded to summon John Burkholder, Frederick Heiser, Herman Metzgar, Edward Jones, Benjaman Vandyke, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, James C. Rankin, and Robert C. Kendal, citizens of Des Moines County, in the State of Iowa, and for the year A. D. 1868 members of the board of supervisors of said county of Des Moines, to appear before the circuit court of the United States in and for the district of Iowa, at a term to be begun and holden at Des Moines on the second Tuesday of May,

A. D. 1869, it being the eleventh day of May next, to answer unto Henry Amy, a citizen of the State of New York, in a plea of debt in the sum of twelve thousand one hundred and eight and $\frac{3}{100}$ dollars, ($12,108 03,) and damages $3,000, togather with interest and costs. Hereof fail not.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Des Moines, this the 31st day of March, A. D. 1869, and the independence of the United States the 93.

GEORGE B. CORKHILL, *Clerk.*

This summons came into my hands for service on the 31st day of March, 1869, and I served the same on the within-named persons, as follows: On Herman Metzgar, Benjaman Vandyke, John Bryson, Justus Clark, William Wolverton, John Ingham, and Robert Kendal on the 3d day of April, 1869, and on John Burkholder, Fredrick Heiser, Edward Jones, John W. Barnes, and James C. Rankin on the 5th day of April, 1869, by reading the same to each of them, and by delivering to each a copy in the county of Des Moines, Iowa.

G. W. CLARK, *U. S. Marshal.*

Marshal's costs.

Mileage, 300 miles	$18 00
Service on 12	24 00
12 copies	6 00
	$48 00

On this day, to wit, the 31st day of March, A. D. 1869, came said plaintiff, by his attorneys, Grant & Smith & C. Whittaker, and filed in said clerk's office his declaration in said entitled cause; which said declaration is in words and figures following, to wit:

In the circuit court of the United States for the district of Iowa, May term, A. D. 1869.

John Burkholder, Fredrick Heiser, Benjaman Vandyke, Herman Metsger, Edward Jones, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, James C. Rankin, Robert C. Kendal, citizens of the State of Iowa, and for the year A. D. 1868 members of the board of supervisors of Des Moines County, in the State of Iowa, were summoned to answer Henry Amy, a citizen of the State of New York, in a plea of debt of twelve thousand one hundred and eight & $\frac{3}{100}$ dollars, and damages three thousand dollars.

1st count.

And therefore the said plaintiff complaines of the said defendants for that heretofore, to wit, on the 16th day of May, A. D. 1867, being the May term of the circuit court of the United States in and for the district of Iowa, the said Henry Amy recovered judgement in the said court against the said county of Des Moines, in the State of Iowa, for the sum of ten thousand five hundred and six and $\frac{13}{100}$ dollars, and cost taxed at thirty four and $\frac{75}{100}$ dollars, with interest on the same at the rate of 7 per cent. per annum, which said judgement is now

on file in the record of this court, to which reference is hereby had, and the same [and the same] is made a part hereof, which said judgement is in full force, and wholly unpaid; that afterwards, to wit, on the day of , A. D. 1867, an execution was issued on the said judgement, and returned, by the marshal of the [the] said State of Iowa, no property found, which will more fully appear by reference to the [words] *records* of this said case now on file among the records of this court, to which reference is hereby had, and the same is made a part hereof; that afterwards, to wit, at the October term of said court, A. D. 1867, on the petition of the said plaintiff, there issued from said court an alternative writ of mandamus, which was duly served on the members of the board of supervisors of the said county of Des Moines, commanding them to levy and collect a specific tax to pay said judgement, interest, and cost, and to pay therewith said judgement, interest, and costs, or to show cause, at the next term of said court, why they should not, which said proceeding is
10 now on file among the records of this court, to which reference is hereby had for greater certainty, and the same is made a part hereof; that afterwards such proceedings were had on the said petition of the said plaintiff that, at the May term of the court, to wit, on the 27th day of May, A. D. 1868, there was issued from [from] this court a peremptory writ of mandamus, which was duly served on the said defendants, and on each one of them, as supervisors of said county of Des Moines, commanding them, and each one of them, to levy forthwith, and to collect, a specific tax on the county valuation of said county of Des Moines, in the said State of Iowa, sufficient to pay, and to pay therewith, said judgement, interest, and cost when collected, which said writ and the proceedings had thereon is now on file among the records of this court, to which reference is hereby had, and the same is made a part hereof. And, upon the serving of the said writ, it became and was the
11 duty of the said defendants, and each one of them, to levy said tax, and to collect the same, and to pay therewith said judgement, interest, and costs. Yet, though so commanded to do by the order of this court, the said defendants, and each one of them, have neglected and refused to levy and collect said tax, or any part thereof, or any tax, to pay said judgement, and have neglected and refused to pay said judgement, or any part thereof, or to make any provision for the payment of the same, as they were in duty bound to do; whereby the said plaintiff has been damaged by the said defendants in the said sum of twelve thousand one hundred and eight and $\frac{3}{100}$ dollars, whereupon he sues.

2ond count.

And for other and further cause of complaint the said plaintiff avers that heretofore, to wit, on the 16th day of May, A. D. 1867, in the circuit court of the United States in and for the district of Iowa, he recovered judgement in his favor against the county of Des Moines for the
12 sum of ten thousand five hundred and eighty-six and $\frac{16}{100}$ dollars, with interest on the same at the rate of seven per cent. per annum; that execution was, on the day of , A. D. 1867, issued on said judgement, and returned, by the marshal of said State of Iowa, "No property found," all of which will more fully appear by reference to the records of said judgement and execution now on file among the records of this court, to which reference is hereby had, and the same is made a part hereof; that said judgement was in A. D. 1868, and is now, in full force and effect, and wholly unsatisfied; that it was the duty of the

defendants, as members of the board of supervisors of the said county of Des Moines, in the State of Iowa, for the said year of A. D. 1868, to levy and collect a tax on the taxable property of the said county of Des Moines, on the county valuation of the same for the year A. D. 1868, sufficient to pay said judgement, interest, and costs, in accordance with the statute of the State of Iowa in such cases made and provided; and it is provided by said statute as follows: "In case no property is
13 found on which to levy, which is not exempted by the last section, or if the judgement creditor elect not to issue execution against such corporation, he is entitled to the amount of his judgement and costs in the ordinary evidences of indebtedness issued by that corporation, and, if the debtor corporation issues no scrip or evidences of debt, a tax must be levied, as early as practicable, sufficient to pay off the judgement, with interest and costs." And this plaintiff avers that, although a sufficient time has expired, therefore the said defendant, and each one of them, have wholly neglected and refused to comply with the requirements of the aforesaid statute, and have not levied said tax nor any part thereof, nor in any manner provided for the payment of the said judgement, but have wholly neglected and refused so to do; whereby this plaintiff has been damaged by the said defendants in the said sum of twelve thousand one hundred and eight and $\frac{3}{100}$ dollars debt, whereupon he sues.

Wherefore, in consideration of the premises, the said plaintiff
14 asks judgement against the said defendant for the said sum of twelve thousand one hundred and eight and $\frac{3}{100}$ dollars, and damages three thousand dollars, and that he may have execution therefore.

GRANT AND SMITH &
C. WHITAKER,
Att'y f'r Pl'ff.

STATE OF IOWA, *Scott County, ss:*

I, S. F. Smith, being first duly sworn, on oath do say that I am the att'y for the above plaintiff Henry Amy; that I obtained the judgement on which this suit is brought; that the amount claimed therein is still due; that there has never been anything paid on said judgement; that the facts set forth in the above declaration, so far as of my knowledge, are true, and those not of my knowledge I believe to be true.

SAM'L F. SMITH.

Sworn to and subscribed by S. F. Smith, in my presence, this the 30th day of March, A. D. 1869.

W. J. BURCHARD,
Notary Public Scott County, Iowa.

15 On this day, to wit, the 13th day of May, A. D., 1869, came said defendants, by their attorneys, H. Strong & J. Tracy, [their attorneys,] and filed in said clerk's office their plea in said cause; which said plea is in the words and figures following, to wit:

In U. S. circuit court, district of Iowa, May term, 1869.

HENRY AMY
vs.
JOHN BURKHOLDER.

And now comes the said defendants, John Burkholder, Fredrick

Heiser Herman Metzgar, Edward Jones, Benjaman Vandyke, John Bryson, Justus Clark, William Wharton, John Ingham, J. W. Barnes, and James C. Rankin—

16 1. And for answers to the plaintiff's petition deny that they, or either of them, are indebted to said plaintiff in manner and form as avered in his petition, and they deny that they are not liable to said plaintiff in any sum whatever.

2. And these defendants in this behalf aver that they, as officers of said Des Moines County, comprising the board of supervisors thereof, are not liable to said plaintiff for the amount of his said judgement against said county of Des Moines for the non-levy of a specific tax upon the taxable property of said county to pay the same, for the reason, as they are informed by council, and so believe, that no sufficient demand has ever been made upon them for the levy of said tax or to issue evidences of debt, and for the further reason that, long before any demand was ever made upon them to levy a specific tax to pay plaintiff's judgement an injunction was regularly granted by the district court of the State of Iowa for said Des Moines County, perpetually enjoining the board of supervisors of said county and their successors in

17 office from ever levying any tax, special or general, to pay the indebtedness which plaintiff now seeks to recover of these defendants; that said injunction was granted on the 17th day of October, 1866, and that, by decree and injunction, the obligation upon which plaintiff's judgement in this court is based were declared absolutely null and void; that said decree of said district court of Des Moines County is now, and ever has (since the rendering thereof) been in full force and binding upon these defendants; that these defendants, notwithstanding the said injunction and decree of the district court of said county of Des Moines, restraining them from levying a special tax to pay plaintiff's judgement against said county, rendered in this court, as alleged by plaintiff, did, in obedience to the writ of mandamus issued by this court at the instance of plaintiff, proceed in good faith to levy a special tax upon the taxable property of said county sufficient to pay plaintiff's judge-

18 ment, but before they succeeded in levying said tax they were severally arrested by the sheriff of said Des Moines County, by order of the Honorable Francis Springer, judge of the district court of the State of Iowa for said county, for an alleged contempt of the process and injunction of said district court, and were severally arrested as aforesaid, and taken before the said judge of the district court for said county, and, upon a hearing there had, were ordered to give bonds each in the sum of $1,000 00 to appear at the next term of the district court for said county, to answer to said charge of contempt intended, also for the future observance of said injunction; that these defendants are now held under bond of $1,000 00 each for their appearance at said court to answer to said charge of contempt, and that said injunction proceedings and the proceedings instituted against them in said district court of Des Moines County are now pending against them in said court, as will fully appear by certified copies thereof hereto attached, marked (A)

19 and made a part of this answer. Defendants, therefore, aver that it has not been in their power at any time to levy a special tax upon the taxable property of said county to pay the judgement of said plaintiff against said county since the issuing of the alternative writ of mandamus, as alleged by pl'ff, without subjecting themselves an arrest and punishment by the district court of said county for a violation of said injunction.

3d. And these defendants further aver, upon information and belief,

that the act of the general assembly of the State of Iowa, making the members or officers of a corporation individually liable for the non-levy of tax, issuing of evidences of debt, &c., to pay corporation indebtedness, was repealed by the general assembly of the same State prior to the issuing of the peremptory writ of mandamus in said cause, and by which repeal these defendants were and are exempt from personal liability, and that these defendants are not therefore liable individually, by virtue of the laws of the State of Iowa, for the non-levy of said special
20 tax to pay plaintiff's judgement.

Def'ts therefore ask to be discharged, with the costs in this behalf expended.

HENRY STRONG,
JOSHUA TRACY,
Att'ys for Def't.

I, Justus Clark, upon my oath do say that I am one of the defendants in the above-entitled suit, and that I have heard the forgoing answer read over, and understand the contents thereof, and that the same is true, as I verily believe.

JUSTUS CLARK.

Subscribed and sworn to by Justus Clark before me the 13th day of May, 1869.

GEORGE B. CORKHILL, *Clerk.*

21

22 STATE OF IOWA, *Des Moines County, ss:*

Pleas before the district court of Iowa, at a term begun and holden in the county of Des Moines on this 19th day of April, A. D. 1869, befor the Hon. Francis Springer, judge of the first judicial district of the State of Iowa.

A. W. CARPENTER ET AL. *vs.* COUNTY OF DES MOINES. } Injunction.

Be it rembered that heretofore, to wit, on the 5th day of April, A. D 1866, a petition was filed in the office of the clerk of the district court in and for the county of Des Moines, in words & figures following, to wit:

23 THE STATE OF IOWA, *Des Moines County, ss:*

A. W. CARPENTER, H. W. STARR, ELISHA Chamberlin, J. P. Sunderland, J. H. Davey, Lyman Cook, J. S. Schramm, Jno. L. Corse, John Sawyer, Warner Miller, Erastus Chamberlin, Ja's Putman, Nat. Erwin, John Patterson, Alex. Hilleary, Jesse Hunt, Mark Foote, F. M. Brooks, Jacob Lanman, H. H. Scott, W'm Johnson, who are for themselves, and all other tax-payers of Des Moines, plaintiffs,

vs.

THE COUNTY OF DES MOINES, THE BOARD OF

Supervisors of the county of Des Moines, W. D. McCash, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, C. M. Garman, John Ingram, R. C. Kendal, John R. Kline, John W. Orr, Ja's C. Rankin, C. H. Snelson, and E. Woodward, members of said board of supervisors, the Burlington & Missouri River Railroad Company, A. Rusch & Co., defendants.

Petition in equitable proceedings, to the district court of said county and State:

Your petitioners most respectfully show unto the court here that they are residents and citizens of said county and State, and individually are the owners of large and valuable property, both real and personal estate, and are directly and immediately interested in the financial and fiscal affairs of said county; that your petitioners are tax-payers, and their real and personal estates aforesaid are subject to taxation, and by law all taxes legally levied by the board of supervisors of said county for county purposes are a perpetual lien upon said real estate.

Your petitioners further state that, in August, 1863, the people of said county were induced to vote upon the question whether the county judge of said county should issue to the Burlington and Missouri River Railroad Company, a corporation organized under the laws of Iowa for the purpose of constructing and managing a railroad from Burlington westward toward the Missouri River, bonds of said county to the amount of one hundred and fifty thousand dollars, bearing not more than eight per cent. interest, and payable in twenty years, taking therefor a like sum in the capital stock of said railroad company, one hundred and fifty bonds of said county of the denomination of $1,000, payable twenty years after date, bearing interest at the rate of eight per cent. per annum, payable annually, and made payable in the State of New York; that it was inserted and expressed in the body of said bonds that the same were issued for stock in said railroad company, and that the holder of said bonds might, at any time, exchange them for a similar amount of said stock at par; that the different and divers persons hereinafter mentioned, and the holders of said bonds, took and received said bonds in contemplation of the law and equity, with full notice of the purposes for which said bonds were issued.

Your petitioners further state that, as they are informed by counsel and verily believe, the said parties, dealing in and purchasers of said bonds, were bound to know what powers and authority were vested by law in the county of Des Moines, and that the holders thereof became such with full notice of the rights and powers of the said county, and of its officers and agents. And your petitioners aver that said county of Des Moines was, and is, a municipal corporation created and organized under and by virtue of the laws of the State of Iowa, as an agent of said State to aid in the better government of the people therein, and the better security and enjoyment of the material rights of the citizens. And your petitioners charge that the said county of Des Moines had no authority to subscribe for the capital stock aforesaid, or in any manner to become members of the said railroad corporation; that said county had no authority to issue its bonds for the purpose of aiding in

27 the construction and management of said railroad company, and that all of the acts and doings of said county judges & officers in the issue and delivery of said bonds were illegal and void, and are not binding upon the said county.

Your petitioners further state that, since the issuing of said bonds, the same have been negotiated and are now scattered over the country, and are now in the hands of many and divers parties, most of whose names are unknown to petitioners. But petitioners charge, upon the advice of their counsel, that the said county, and its officers and agents, had no power or authority to issue bonds or other evidences of indebtness, which should be negotiable, in its nature, with the incidents of negotiability, and that all of said parties, in purchasing and becoming holders of said bonds, were bound to know the powers and authority of said county, its officers and agents, and in law and equity took the said bonds with full notice of the want of said power of authority. And your petitioners aver that the said bonds are now subject to all the defences they would have been in the hands of the original party thereto, namely, the Burlington and Missouri River Railroad Company.

But your petitioners charge that, notwithstanding all these facts,
28 the said holders of said bonds are seeking, in every manner, to enforce said bonds, and the interest warrants thereunto attached; and many of them are bringing suits against said county, particularly in the courts of the United States holden in the State of Iowa; that by an unhappy disagreement as to the fundamental laws of the State of Iowa, and the rights of the citizens under the organization of counties and their municipal corporations, the federal courts have heretofore rendered judgement upon, and have exercised their jurisdiction toward, the enforcement of said bonds.

And your petitioners further state that many of said bondholders are threttening to proceed by mandamus or other process, and compel the board of supervisors to levy a special tax upon the taxable property of said county for the purpose of paying the interest accruing on said bonds, and any judgement which may have been rendered thereupon. And the owners of said bonds assert and claim that the taxable property of said county is holden by a species of equitable mortgage, to be enforced and foreclosed by means of levies of taxes, which said
29 bonds, and the claims and acts of said owners, casts a cloud upon your petitioners' property, and depreciates the value thereof.

And your petitioners further state that, in view of the decisions and actions had in the federal courts, the present board of supervisors have about concluded to levy taxes, and your petitioners have reason to believe that, unless restrained, the said board of supervisors will, at their next regular term, or as soon thereafter as they may deem legal, proceed and levy a tax upon the taxable property of said county, to raise a fund to pay off the interest accrued upon said bonds; all of which petitioners charge, as they are informed by counsel, is illegal and improper, and is therefore prejudicial to petitioners' rights of property.

Your petitioners further state that the levying of a tax upon the taxable property of this county is an exercise of the immediate and direct power of the government of the State of Iowa, which it is peculiarly and apropriately the province of the courts of the said State to control and supervise and correct, and petitioners aver that this court
30 has full and complete jurisdiction over the board of supervisors, and to determine the rights of the citizens against the assumed rights to levy the taxes aforesaid, and to protect them against all illegal and wrongfull exercise of power.

Supervisors of the county of Des Moines, W. D. McCash, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, C. M. Garman, John Ingram, R. Q. Kendal, John R. Kline, John W. Orr, Ja's C. Rankin, C. H. Snelson, and E. Woodward, members of said board of supervisors, the Burlington & Missouri River Railroad Company, A. Rusch & Co., defendants.

Petition in equitable proceedings, to the district court of said county and State:

Your petitioners most respectfully show unto the court here that they are residents and citizens of said county and State, and individually are the owners of large and valuable property, both real and personal estate, and are directly and immediately interested in the financial and fiscal affairs of said county; that your petitioners are tax-payers, and their real and personal estates aforesaid are subject to taxation, and by law all taxes legally levied by the board of supervisors of said county for county purposes are a perpetual lien upon said real estate.

Your petitioners further state that, in August, 1863, the people of said county were induced to vote upon the question whether the county judge of said county should issue to the Burlington and Missouri River Railroad Company, a corporation organized under the laws of Iowa for the purpose of constructing and managing a railroad from Burlington westward toward the Missouri River, bonds of said county to the amount of one hundred and fifty thousand dollars, bearing not more than eight per cent. interest, and payable in twenty years, taking therefor a like sum in the capital stock of said railroad company, one hundred and fifty bonds of said county of the denomination of $1,000, payable twenty years after date, bearing interest at the rate of eight per cent. per annum, payable annually, and made payable in the State of New York; that it was inserted and expressed in the body of said bonds that the same were issued for stock in said railroad company, and that the holder of said bonds might, at any time, exchange them for a similar amount of said stock at par; that the different and divers persons hereinafter mentioned, and the holders of said bonds, took and received said bonds in contemplation of the law and equity, with full notice of the purposes for which said bonds were issued.

Your petitioners further state that, as they are informed by counsel and verily believe, the said parties, dealing in and purchasers of said bonds, were bound to know what powers and authority were vested by law in the county of Des Moines, and that the holders thereof became such with full notice of the rights and powers of the said county, and of its officers and agents. And your petitioners aver that said county of Des Moines was, and is, a municipal corporation created and organized under and by virtue of the laws of the State of Iowa, as an agent of said State to aid in the better government of the people therein, and the better security and enjoyment of the material rights of the citizens. And your petitioners charge that the said county of Des Moines had no authority to subscribe for the capital stock aforesaid, or in any manner to become members of the said railroad corporation; that said county had no authority to issue its bonds for the purpose of aiding in

27 the construction and management of said railroad company, and that all of the acts and doings of said county judges & officers in the issue and delivery of said bonds were illegal and void, and are not binding upon the said county.

Your petitioners further state that, since the issuing of said bonds, the same have been negotiated and are now scattered over the country, and are now in the hands of many and divers parties, most of whose names are unknown to petitioners. But petitioners charge, upon the advice of their counsel, that the said county, and its officers and agents, had no power or authority to issue bonds or other evidences of indebtness, which should be negotiable, in its nature, with the incidents of negotiability, and that all of said parties, in purchasing and becoming holders of said bonds, were bound to know the powers and authority of said county, its officers and agents, and in law and equity took the said bonds with full notice of the want of said power of authority. And your petitioners aver that the said bonds are now subject to all the defences they would have been in the hands of the original party thereto, namely, the Burlington and Missouri River Railroad Company.

But your petitioners charge that, notwithstanding all these facts,
28 the said holders of said bonds are seeking, in every manner, to enforce said bonds, and the interest warrants thereunto attached; and many of them are bringing suits against said county, particularly in the courts of the United States holden in the State of Iowa; that by an unhappy disagreement as to the fundamental laws of the State of Iowa, and the rights of the citizens under the organization of counties and their municipal corporations, the federal courts have heretofore rendered judgement upon, and have exercised their jurisdiction toward, the enforcement of said bonds.

And your petitioners further state that many of said bondholders are threttening to proceed by mandamus or other process, and compel the board of supervisors to levy a special tax upon the taxable property of said county for the purpose of paying the interest accruing on said bonds, and any judgement which may have been rendered thereupon. And the owners of said bonds assert and claim that the taxable property of said county is holden by a species of equitable mortgage, to be enforced and foreclosed by means of levies of taxes, which said
29 bonds, and the claims and acts of said owners, casts a cloud upon your petitioners' property, and depreciates the value thereof.

And your petitioners further state that, in view of the decisions and actions had in the federal courts, the present board of supervisors have about concluded to levy taxes, and your petitioners have reason to believe that, unless restrained, the said board of supervisors will, at their next regular term, or as soon thereafter as they may deem legal, proceed and levy a tax upon the taxable property of said county, to raise a fund to pay off the interest accrued upon said bonds; all of which petitioners charge, as they are informed by counsel, is illegal and improper, and is therefore prejudicial to petitioners' rights of property.

Your petitioners further state that the levying of a tax upon the taxable property of this county is an exercise of the immediate and direct power of the government of the State of Iowa, which it is peculiarly and apropriately the province of the courts of the said State to control and supervise and correct, and petitioners aver that this court
30 has full and complete jurisdiction over the board of supervisors, and to determine the rights of the citizens against the assumed rights to levy the taxes aforesaid, and to protect them against all illegal and wrongfull exercise of power.

Your petitioners further state that, at and about the time when said bonds were so issued and delivered to the said Burlington and Missouri River R. R. Company, there was issued and delivered to some of the officers of said county certificates of the capital stock of said company, amounting to the said sum of $150,000, which said certificates, as petitioners are informed and believe, are still in the custody of some of said officers, and said stock still stands in the name of said county; but petitioners charge that no dividends have been declared thereupon, and that said stock is and should be held for the benefit of the said bondholders, and that said bondholders should have the benefit thereof.

Your petitioners state that A. Rusch & Co. are holders of some of said bonds, as are also

and are interested in the questions herein presented; and your
31 petitioners therefore pray that they and the county of Des Moines, the board of supervisors, and the individual members thereof, the Burlington & Missouri River Railroad Company, may be made parties def't thereto, and be required to answer according to law and the rules of this court, and that the court will issue its preliminary injunction, restraining & prohibiting the said board of supervisors, as individuals and as corporation, and their successors in office, from levying any tax whatever upon the taxable property of said county, whereby to raise or create a fund to pay said bonds or the interest thereon, or from appropriating any of the monies of the county for that purpose; and that, upon final hearing, said injunction and prohibition may be made final and perpetual against said board of supervisors and their successors in office forever; that a receiver may be appointed to take charge of said stock, under direction of the court, to hold or dispose of the same; that all of the said bondholders, as rapidly as they can be ascertained, may be brought into court, & their rights to said stock or its proceeds adjusted and determined; that any supposed or pre-
32 tended right of said county to said stock may be cut off and barred, and that said B. & M. R. R. Company may be required to account to this court for said stock and all dividends hereafter declared, and be compelled to recognise the disposition made of said stock by this court.

Your petitioners also pray for full and complete relief in all other respects, as full and complete as though specially prayed for.

J. C. & B. J. HALL,
Pl'ffs' Att'ys.

THE STATE OF IOWA, *Des Moines County, ss:*

I, Elisha Chamberlin, on oath say that I am one of the petitioners in the within petition, and have been made acquainted with the contents thereof; that the matters and things therein stated, so far as stated of my own knowledge, are true, and as far as stated, as upon information and belief I verily believe them to be true.

ELISHA CHAMBERLIN.

Subscribed and sworn to by Elisha Chamberlin, in my presence and before me, this 5th day of April, 1866.

[SEAL.]

B. J. HALL,
Notary Public.

33 *Notice.*

STATE OF IOWA, *Des Moines County, ss :*

The County of Des Moines, the Board of Supervisors of the county of Des Moines, the Burlington and Missouri River Railroad Company, John Bryson, W. H. Cartwright, Justus Clark, E. Woodward, R. B. Foster, C. M. Garman, John Ingram, R. C. Kendal, John R. Kline, W. D. McCash, John W. Orr, James C. Rankin, & C. H. Snelson, [to] members of said board of supervisors :

You are hereby notified that there is now on file in the office of the clerk of the district court of said county a petition of A. W. Carpenter et al., claiming an injunction, perpetually restraining the board of supervisors from levying any tax upon the taxable property of Des Moines County or otherwise raising a fund to pay the interest or principal of certain bonds heretofore issued to the Burlington & Missouri River Railroad Company, and seeking other equitable relief; and that, unliss you appear thereto and defend on or before noon of the second day of the next term of said district court, to be begun and holden in the city of Burlington, in said county, on the third Monday of April, A. D.
34 1866, default will be entered against you, and judgement rendered thereon.

J. C. & B. J. HALL,
Att'ys for Pl'ff.

STATE OF IOWA, *Des Moines County, ss :*

This notice came into my hands April 4th, 1866, and on April 5th, 1866, I served the Burlington & Missouri River Railroad Company by reading and delivering a true copy to Charles E. Perkins, superintendent of said road, in the city of Burlington, Des Moines County, Iowa, and on W. D. McCash, president of the board of supervisors for Des Moines County by reading the within to him, and by delivering to him a true copy thereof, in the city of Burlington, Des Moines County, Iowa. April 7th, served E. Woodward and John Ingram by reading and delivering to each a true copy of the within, in the city of Burlington, Iowa. April 11th, '66, served Robert Kendal by reading to him, in the city of Burlington, Des Moines County, Iowa; copy waived. April 13th, '66, served the within on C. H. Snelson by reading the within to him, and delivering to him a true copy, in the city of Burlington,
35 Des Moines County, Iowa. April 14th, 1866, served the within on C. M. Garman by reading the within to him, and delivering to him a true copy, in the city of Burlington, Des Moines County, Iowa. April 16th, 1866, served the within on the within-named W. H. Cartwright by reading the same to him, in the city of Burlington, Iowa; copy waived. May 3d, served John W. Orr by reading and delivering a true copy to him, in Benton township; also, Ja's C. Rankin, by reading and a copy to him, in Huron township, May 4th, 1866; Jno. R. Kline, by reading and copy, in Franklin township; R. B. Foster, by reading and copy, in Danville township, May 5th, 1866; Jno. Bryson by reading and copy, in Agusta township, May 5th, 1866. Justus Clark not found.

A. S. PERRY,
Sheriff Des Moines County, Iowa.

And afterwards, to wit, on the 24th day of April, A. D. 1866, the same being the first day of the April term for 1866, an entry appears of record in the above-entitled cause in words & figures following, to wit:

36 A. W. CARPENTER
vs.
THE COUNTY OF DES MOINES, AND BOARD OF Supervisors, et al. } No. 430, ch'y.—Injunction.

On motion of D. Rorer, att'y for the Burlington & Mo. River R. R. Co., it is ordered by the court that said defendants have sixty days to answer.

And afterwards, to wit, on the 27th day of April, A. D. 1866, the same being the 4th day of the April term for 1866, an entry appeared of record in the above entitled cause in words and figures following, to wit:

A. W. CARPENTER ET AL.
vs.
THE COUNTY OF DES MOINES, AND THE BOARD of Supervisors thereof, et al. } No. 430, ch'y.—Injunction and equitable relief.

Now on this day came on to be heard the application of petitioners for a preliminary injunction, directed to the board of supervisors in their corporate and individual capacities, restraining and enjoining them from levying any tax upon the taxable property of said
37 county, or from otherwise creating any fund or making any appropriation of the funds of said county, for the purpose of paying any bonds heretofore issued by any of the officers of said county to the Burlington & Missouri River Railroad Company, or other persons, for stock in said railroad company, or to aid in the construction thereof, or from paying any interest warrants or coupons attached thereto. And the court, being advised in the premises, now order and direct that a writ of injunction issue, as prayed for by petitioners, upon bonds being filed, conditioned according to law, in the sum of $20,000, to be approved by the clerk.

April 27th, 1866.

And afterwards, to wit, on the 2nd day of May, 1866, plaintiffs filed a bond in said clerk's office in words and figures following, to wit:

38 Know all men by these presents that we whose names are hereto attached as principals, and whose names are subscribed as security, are held and firmly bound unto the president of the board of supervisors, for the use and benefit of all other persons to be thereby affected, in the penal sum of twenty thousand dollars, ($20,000,) for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Yet to be void if A. W. Carpenter and others, who has this day sued out a writ of injunction against the board of supervisors of Des Moines County, shall pay all the damages that may be adjudged against him, and the said A. W. Carpenter and others, by reason of said injunction; else to be of force.

Witness our names this first day of May, A. D. 1866.

A. W. CARPENTER.
EDW'D McKITTERICK.
JOHN H. DAVEY.
JAMES PUTMAN.

Bond and security taken and approved by me this 2d day of May, A. D. 1866.

WILLIAM GARRETT, *Clerk.*

39 Whereupon a writ of injunction was issued by said clerk in words & figures following, to wit:

STATE OF IOWA, *Des Moines County, ss:*

To the County of Des Moines, the Board of Supervisors of the county of Des Moines, W. D. McCash, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, O. M. Garman, John Ingram, R. C. Kendal, John R. Kline, John W. Orr, Ja's E. Rankin, C. W. Snelson, and E. Woodward, members of said board of supervisors, the Burlington and Missouri River Railroad Company, A. Rusch & Co., greeting:

Whereas A. W. Carpenter, H. W. Starr, et al., have obtained an order and filed a bond, as required by law, for an injunction against you for the purpose hereinafter stated:

Therefore, in the name of the State of Iowa, you, the said W. D. McCash, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, O. M. Garman, John Ingram, R. C. Kendal, John R. Kline, John W. Orr, James C. Rankin, C. N. Snelson, and E. Woodward, members of the board of supervisors of Des Moines County, the County of Des Moines, the Burlington & Missouri River Railroad Co., A.

40 Rusch & Co., are hereby enjoined and restrained, as a board of supervisors or as individuals or as corporators, and your successors in office, from levying any tax whatever upon the taxable property of said county, whereby to raise or create a fund to pay the bonds, or the interest thereon, given for stock in the Burlington & Missouri River Railroad Company, or from appropriating any of the monies of the county of Des Moines for that purpose, until the order of the district court of said county can be had thereon. Hereof fail not at your peril.

Witness William Garrett, clerk of said court, with the seal thereof hereto affixed the 2nd day of May, A. D. 1866,

[SEAL.] WILLIAM GARRETT,
Clerk of said Court.

On which writ of injunction is the following return:

STATE OF IOWA, *Des Moines County, ss:*

This notice came into my hands May 2nd, 1866, and was served as follows, by reading to the within-named persons, at their places of residence:

41

May 3.	John W. Orr,	in Benton	township;	copy	waived.	
" 3.	Ja's C. Rankin,	" Huron	" "	"	"	
" 4.	C. R. Snelson,	" Washington	" "	"	"	
" 4.	Jno. R. Kline,	" Franklin	" "	"	"	
" 4.	W. H. Cartwright,	" Yellow Springs	" "	"	"	
" 4.	Justus Clark,	not found.				
" 5.	John Bryson,	" Agusta	" "	copy demanded.		
" 5.	R. B. Foster,	" Danville	" "	copy	waived.	
" 7.	C. M. Grannan,	" Jackson	" "	"	"	
" 7.	John Ingram,	" Flint River	"	"	"	
" 7.	R. C. Kendal,	" Burlington	"	"	"	
" 7.	W. D. McCash,	" "	"	"	"	
" 7.	E. Woodward,	" Union	"	"	"	

All in Des Moines County, Iowa.

A. S. PERRY,
Sheriff Des Moines County,
Per W'M ROLLOCK, *Spec. Deputy.*

And afterwards, to wit, on the 8th day of June, A. D. 1866, there was filed in the office of said clerk the answer of the B. & M. R. R. Co., in words & figures following, to wit:

In the district court of Des Moines County, in the State of Iowa.

42 A. W. CARPENTER & OTHERS, PL'FFS,
vs.
THE COUNTY OF DES MOINES, THE SUPERVISORS of Des Moines County, and the Burlington & Missouri River Railroad Company & others, defendants.

Answer of the Burlington & Missouri River Railroad Company.

This defendant, the Burlington & Missouri River Railroad Company, for answer says:

1st. That this defendant did not at the commencement of this suit, and does not now, own, possess, or control any bonds, or bond, or coupons thereof, referred to in the petition of petitioners in this suit, and has no interest whatever in any of said bonds or coupons.

2nd. This defendant delivered over the capital stock of said county to said county, and does not know in whose charge it now is, and has no manner of interest therein.

3d. This defendant, having disclaimed, asks to be dismissed, with costs.

DAVID RORER,
Attorney for the Burlington & Missouri River Railroad Company.

43 STATE OF MASSACHUSETTS, *Suffolk County, ss:*

Before me, a notary public in and for said State & county, this day came John A. Dennison, who, being by me duly sworn, upon his oath says that he is the treasurer of the Burlington & Missouri River Railroad Company, and that the matters and things stated in the within answer are true, as he verily believes.

J. N. DENNISON.

Sworn to and subscribed before me this 5th day of June, A. D. 1866, as witness my hand & notarial seal this the date aforesaid.

[SEAL.] CHA'S B. F. ADAMS, *Notary Public.*

And afterwards, to wit, on the 30 day of October, A. D. 1866, the same being the 3d day of the October term for 1866, an entry appeared of record in the above-entitled cause in words & figures following, to wit:

44 A. W. CARPENTER ET AL.
vs.
THE COUNTY OF DES MOINES AND BOARD OF Supervisors. } No. 430, ch'y.

On motion of J. C. & B. J. Hall, solicitors for plaintiffs, it is ordered by the court that the Burlington & Missouri River Railroad Company be, and are hereby, discharged and dismissed from this suit.

And afterwards, to wit, on the 17th day of October, A. D. 1866, the same being the 15th day of the October term for 1866, an entry appeared

of record in the above-entitled cause in words & figures following, to wit:

A. W. CARPENTER ET AL. *vs.* THE COUNTY OF DES MOINES, THE BOARD OF Supervisors of Des Moines County, Iowa, W. D. McCash, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, C. M. Garman, John Ingram, R. C. Kendal, Jno. R. Kline, John W. Orr, Ja's C. Rankin, and E. Woodward, members of the board of supervisors of Des Moines County, and their successors in office.	No. 430, ch'y.

45 Now on this day this cause coming on to be heard, the plaintiffs appearing by J. C. & B. J. Hall, their attorneys, and the defendants, though duly served with notice of the pendency of this suit according to law, have failed to appear, plead, answer, or demur, as required by law and the rules of this court, it is ordered that a default be, and the same is hereby, entered up against said defendants.

And the cause coming on for further hearing upon the default, and the pleadings being read, and the court, having seen and heard the evidence, and being fully advised in the premises, finds the equity with plaintiff, and that the allegations contained in plaintiffs' petition are true; that plaintiffs, who sue for themselves and the other property-holders in said county, hold large & valuable real estate situate in said county, liable to taxation; that, in the years 1853 and subsequent thereto, the county judge of said county caused to be issued in the name of said Des Moines County, in payment for shares in the capital stock in the Burlington & Missouri River Railroad Company, one hundred and fifty bonds
46 for the sum of $1,000 each, bearing interest at the rate of 8 per cent. per annum, payable 20 years after date, to which were attached coupons or interest warrants, in which said bonds were expressed a condition that the holders thereof might at any time exchange them for said stock; that said bonds & coupons were issued without authority of law and in violation thereof, and are and were void, and that the holders thereof received the same with notice thereof; that the defendants, the board of supervisors of said county, were about making some arrangements concerning said bonds and coupons, and were [and were] about to levy a tax upon the estates of pl'ffs and the other citizens of said county; that sundry & divers holders of said bonds & coupons, whose names are not all known, are now claiming that their said bonds are legal, and are in the nature of a lien upon the estates of said county, and are threatening to procure & require the said board of supervisors to levy such tax; and that, by reason of such claims and threats, and the dispositions of the supervisors to comply therewith, there is cast
47 upon the pl'ffs' estates a cloud of title & lien, to their prejudice & injury, and that they are entitled to relief:

It is therefore ordered, adjudged, & decreed by the court here, that the injunction heretofore issued and served upon the defendants be made perpetual; that the said defendants, the board of supervisors and the members thereof, and their successors, be forever enjoined and restrained from ever levying in any manner any tax, special or otherwise, for the payment of any bonds commonly known as railroad bonds, issued for any stock in the said B. & M. River Railroad Co., and they are further enjoined and restrained from in any manner creating of raising

any fund for the payment of such bonds or any interest coupons thereon.

It is further ordered, adjudged, & decreed by the court here, that the pl'ff have & receive of def'ts their costs in this behalf, taxed at $27 95, and that as to the matter of the stock & a receiver this cause is hereby continued.

Oct 17th, 1866.

FRANCIS SPRUGER, *Judge.*

And afterwards, to wit, on the [on the] 14th day of September, A.
48 D. 1868, there was issued by the judge of said first judicial district his precept in words & figures following, to wit:

STATE OF IOWA, *Des Moines County, ss:*

To the sheriff of Des Moines County:

Satisfactory proof having been furnished to me that the injunction heretofore granted by the district court of Des Moines County in the cause wherein A. W. Carpenter et al. are plaintiffs, and the board of supervisors of Des Moines County et al. are defendants, has been violated by the board of supervisors of said county, you are, therefore, hereby ordered to attach each member of said board of supervisors of said Des Moines County, to wit, John Ingram, Justus Clark, R. C. Kendal, John Burkholder, John Bryson, J. W. Barnes, Fredrick Heizer, Herman Metzgar, J. C. Rankin, Benj. Vandyke, Edward Jones, W'm Wolverton, and bring them forthwith before me at the court-house in Burlington, Des Moines County, Iowa, to be dealt with according to law; and of this writ make due service and return.

September 14th, 1868.

49 FRANCIS SPRUGER,
Judge of the District Court of said County.

On which transcript is the following return:

STATE OF IOWA, *Des Moines County, ss:*

This writ came into my hand on September 14th, 1868, and was served as follows by reading the original to each of them, and delivered to each a true copy of same: R. C. Kendal, Sept. 16th, 1868; John Burkholder, on 19th September 1868; J. W. Barnes, 23d Sept., 1868; Justus Clark, 25th Sept., 1868; John Ingram, 18th Sept., 1868; J. C. Rankin, Fred. Heizer, Herman Metzgar, J. Bryson, B. Vandyke, Ed. Jones, W'm Wolverton, each on 25th September, A. D. 1868, in the city of Burlington, Iowa.

JAMES H. LATTY,
Sheriff Des Moines County.
W. H. JOHNSON, *D'p't.*

And afterwards, to wit, on the 16th day of September, A. D. 1868, the same being during vacation, before the October term 1868,
50 an entry appeared of record in the above-entitled cause in words & figures following, to wit:

STATE OF IOWA, *First Judicial District:*

The undersigned, judge of the district court of said district, having on the 14th day of September, 1868, been furnished with an authenticated copy of the writ of injunction in the case of A. W. Carpenter et al. vs the Board of Supervisors of Des Moines County, and satisfactory proof that said injunction has been violated by the members of said board of

supervisors, and having on said day issued my precept, directed to the sheriff of said Des Moines County, directing him to attach said members of said board of supervisors, whose names are as follows, to wit, R. C. Kendal, John Burkholder, J. W. Barnes, Justus Clark, John Ingram, J. C. Rankin, Fred. Heizer, H. Metzgar, J. Bryson, B. Vandyke, Ed. Jones, W'm Wolverton, and bring them before me, at the court-house in Burlington, in said Des Moines County, to be dealt with according to law; and now, this day, the said above-named members of said
51 board of supervisors appearing at the court-house in the custody of said sheriff, and failing to sufficiently excuse the contempt charged, the said above-named supervisors are each required to give bond, with security to be approved by the clerk of the district court of said Des Moines County, in the sum of one thousand dollars for their appearance at the next term of said court on the first day thereof, to answer said charge of contempt, and to abide the order of said court thereon; and also to their further obedience to said injunction.

September 16th, 1868.

FRANCIS SPRUGER,
Judge as aforesaid.

Whereupon the said board of supervisors signed the following bond:

STATE OF IOWA, *Des Moines:*

Whereas the Hon. Francis Springer, judge of the 1st judicial district, Iowa, did on the 14th day of September, 1868, issue his precept to the sheriff of said county, directing him to attach the [the] under-
51½ signed members of the board of supervisors of said county, to wit, R. C. Kendal, John Ingram, John Burkholder, J. W. Barnes, Justus Clark, James C. Rankin. Fred. Heizer, Herman Metzgar, J. Bryson, B. Vandyke, Ed. Jones, W'm. Wolverton:

And whereas, in obedience to said precept, the undersigned members of said board of supervisors have been attached for an alleged violation of the injunction in the cause of A. W. Carpenter et al. vs. Board of Supervisors of Des Moines County et al:

And whereas the said judge did, on the 16th day of Sept., 1868, order that each member of said board of supervisors be required to give bond with security to be approved by the clerk of the [court of the] district court of said county, in the sum of one thousand dollars, for their appearance at the next term of said court, on the first day thereof, to answer said charge of contempt, and to abide the order of said court therein; and also for the further observance and obedience of said writ:

No, therefore, we, the undersigned, members of the board of supervisors of said Des Moines County, hereby acknowledge ourselves in-
52 debted to the State of Iowa in the sum of one thousand dollars each, for the payment of which we bind ourselves, and heirs, and legal representatives firmly by these presents, dated at Burlington this day of September, A. D. 1868.

To be void upon condition that we shall, each for himself, appear at the next term of the district court in and for Des Moines County, on the first day thereof, to answer to the charge of contempt in the injunction suit of A. W. Carpenter et al. vs. the Board of Supervisors of said county et al., and in the mean time observe and obey said injunction, and not in any manner in the future violate the same; and upon the further condition that we shall obey all orders and decrees made by said court in the premises; otherwise to remain in full force and virtue.

In witness whereof we have hereunty set our names the day and year above written.

	Served Sept. 16th, 1868.	R. C. KENDAL.
	" 18	JOHN INGRAM.
	" 19	JOHN BURKHOLDER.
	" 23	J. W. BARNES.
53	Served Sept. 25, 1868.	JUSTUS CLARK.
	" " "	JAMES C. RANKIN.
	" " "	FRED'K HEIZER.
	" " "	HERMAN METZGAR.
	" " "	J. BRYSON.
	" " "	B. VANDYKE.
	" " "	EDW'D JONES.
	" " "	W'M WOLVERTON.

And afterwards, to wit, on the 21st day of April, A. D. 1869, the same being the 3d day of the April term for 1869, an entry appeared of record in the above-entitled cause in words & figures following, to wit:

A. W. CARPENTER ET AL. vs. COUNTY OF DES MOINES. } No. 430, ch'y.—Injunction.

On motion of J. Tracy, district attorney, and by agreement of parties, the plantiffs, appearing by J. C. &. B. J. Hall, their solicitors, it is ordered by the court that this cause be, and the same is hereby, continued.

54 *Certificate of transcript.*

STATE OF IOWA, *Des Moines County, ss:*

William Garrett, clerk of the district court of the State of Iowa in and for said county, do hereby certify that the foregoing is a true and perfect transcript of the record in the above-entitled cause, wherein A. W. Carpenter et al. are plaintiffs, and the County of Des Moines et al. are defendants, as fully as the same remains on file and of record in my office.

In witness whereof I have hereto set my hand and affixed the seal of said court, at Burlington, this 17th day of May, A. D. 1869.

[SEAL.] WILLIAM GARRETT, *Clerk.*

This transcript, $8 00.

And on this day, to wit, the 17th day of May A. D. 1869, came said plaintiff by his attorneys, and filed in said clerk's office his demurrer to defendants' answer in the above-entitled cause, which in words and figures following, to wit:

55 *Demurrer.*

In the circuit court of the United States for the district of Iowa.

HENRY AMY vs. JOHN BURKHOLDER AND OTHERS. } No. 662.—Demurrer to def'ts' answer.

Now comes the pl'ff, by Grant & Smith and C. Whitaker, his att'ys, and demurs to the answer of def'ts for the following reasons:

1st. Because the def'ts set up no matter of defence in the first count of their answer.

2. As to the matters pleaded in the 2d count, pl'ff demurs to them for the following reasons:

1st. That the same defence was set up as a reason wherefore the writs of mandamus refered to in pl'ff's petition should not issue, and was held insufficient by this court, and the same cannot now be pleaded as a matter of defense in this action, and is no sufficient bar if pleaded in this cause for the first time.

2. That State courts have no authority to interfere with or to stop proceedings in a federal court, either by injunction or otherwise, and def'ts nowhere allege that pl'ff was a party to said injunction in their answer set forth.

56 3d. That no demand other than that set forth in the pl'ff's petition and the alternative writ of mandamus for the levy of a special tax to pay the judgement in said petition mentioned was necessary.

4th. That the def'ts have been commanded by this court to levy a special tax to pay said judgement, and that is deemed sufficient.

5th. That def'ts are liable, if no demand has ever been made on them to levy a tax to pay said judgement.

And as to the third count of said answers for the following reasons:

1st. That the repealing of the act of the general assembly, to which the def'ts refer in said count of their answer, does not in any manner release them from any liability, and that the said def'ts would still be liable if the said statute had never been [issued] *passed*.

2. That the repealing of the said statute is, as to this pl'ff, unconstitutional, null, & void.

GRANT & SMITH,
C. WHITAKER,
Att'ys for Pl'ff's.

56½ On this day, to wit, the 20th day of October, A. D. 1869, at the regular October term (A. D. 1869) of said court, in the proceedings thereof, in said entitled cause is the following entry, to wit:

HENRY AMY *vs.* JOHN BURKHOLDER, HERMAN METZGAR, Edward Jones, Benj. Van Dyke, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, J. C. Rankin, Robert Kendall & Fred. Heizer.	Action on the case.

And now, on the 21st day of October, A. D. 1869, the same being the 2d day of this term, this cause coming on for hearing on the plaintiff's demurrer to the defendants answer, Grant for the plaintiff, and Strong for defendants, and the court doth order & adjudge that the demurrer to said answer be overruled, and the plaintiff abides by the demurrer; whereupon it is *ordered* and adjudged that the plaintiff has no cause of action, and his suit is dismissed with costs; and the plaintiff prayed a writ of error to the Supreme Court of the United States, which is allowed upon his filing a bond in the sum of $250 00, as the law directs, which bond, with Charles Whittaker as surety, is filed and approved by the court, and said writ of error is allowed and filed, and a copy lodged with the clerk for the defendants in error.

57 On this day, to wit, the 21st day of Oct., A. D. 1869, came said plaintiff, and filed their appeal bond in said entitled; cause which said bond is in words and figures following, to wit:

Copy of bond.

Know all men by these presents that we, Henry Amy, principal, and Charles Whittaker, surety, are held and firmly bound unto John Burkholder, Herman Metzgar, Edward Jones, Benjamin Vandike, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, James C. Rankin, & Robert Kendall, in the penal sum of two hundred and fifty dollars, to which payment we bind ourselves and each of us.

Given under our hands this 21 of October, A. D. 1869.

The condition of this obligation is this: Whereas the obligor, Henry Amy, has sued out of the Supreme Court of the United States a writ of error to the circuit court of the district of Iowa in a certain cause therein pending, wherein he is plaintiff and certain obligees defendants: Now, if said Amy shall duly prosecute his writ of error, and abide by and perform all the orders and judgments of the Supreme Court in said cause, and pay all costs and damages adjudged against him, this obligation to be void; otherwise in full force.

HENRY AMY,
By GRANT,
His Attorney of Record.
CHARLES WHITTAKER.

Approved:

J. M. LOVE, *Dis't Judge.*

In open court.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in said circuit court before you, between Henry Amy, plaintiff, and John Buckholder, Herman Metzgar, Edward Jones, Benjamin Vandike, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, James C. Rankin, Robert Kendall, a manifest error hath happened, to the great damage of the said Henry Amy, as by his complaint appears; and we, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if a judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the Supreme court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said

Supreme Court of the United States, this 21st day of October, in the year of our Lord eighteen hundred and sixty , & the seal of our said circuit court.

[SEAL.] GEORGE B. CORKHILL, *Cl'k.*

(Indorsed:) Henry Amy v. John Burkholder & als. Writ of error. Filed on 21 Oct., 1869.

GEORGE B. CORKHILL, *Clerk.*

59 DISTRICT OF IOWA, *ss:*

I, George B. Corkhill, clerk of the circuit court of the United States for said district of Iowa, do hereby certify the foregoing transcript from pages one to 59, inclusive, to contain a full, true, and perfect copy from the record of all the proceedings of said court in said cause, wherein Henry Amy was plaintiff, and John Burkholder, Herman Metzgar, Edward Jones, Benjamin Van Dike, John Bryson, Justus Clark, William Wolverton, John Inghram, John W. Barnes, James C. Rankin, & Robert Kendall were defendants, as the original of the same now remains in my custody; and I further certify that the writ of error sued out by said Henry Amy, plt'ff in error in said cause, is annexed to said transcript.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at my office in Des Moines, in said district, this 6th day of Nov., A. D. 1869.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

(Indorsement on cover:) No. 285. Henry Amy, plaintiff in error, vs. John Buckholder, Herman Metzgar, Edward Jones, Benjamin Van Dike, John Bryson, Justus Clark, William Woolverton, John Ingraham, John W. Barnes, James C. Rankin, and Robert Kendall. Iowa C. C. U. S. Filed 16th November, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 285.

HENRY AMY, PLAINTIFF IN ERROR,

vs.

J. BUCKHOLDER ET AL.

WRIT OF CERTIORARI & RETURN.—FILED FEBRUARY 14, 1870.

60 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the district of Iowa, greeting:

Whereas, in a certain suit in said circuit court between Henry Amy, plaintiff, and John Buckholder, Herman Metzgar, Edward Jones, Benjamin Vandike, John Bryson, Justus Clark, William Wolverton, John Ingham, John W. Barnes, James C. Rankin, and Robert Kendall, defendants, which suit was removed to the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"In copying the record the clerk has omitted the proceedings in the mandamus cause, and the record thereof is necessary in this cause to show that the same defence was made in the mandamus as in this cause:"

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions and errors you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, A. D. 1869.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Issued.

The answer to this writ appears by the annexed record:

60½ THE UNITED STATES EX REL. HENRY AMY
vs.
THE BOARD OF SUPERVISORS OF DES MOINES COUNTY, IOWA.

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61 Pleas in the circuit court of the United States [circuit court] for the district of Iowa, held at the court-house in the city of Des Moines, in said district, before the Honorable Samuel F. Miller, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on the 16 day of Oct., A. D. 1867, and of our independence th year.

GEORGE B. CORKHILL, *Clerk.*

Information for mandamus.

THE UNITED STATES EX REL. HENRY AMY
v.
THE BOARD OF SUPERVISORS DES MOINES County. } Information for mandamus.

Be it remembered that, on the 16th day of October, A. D. 1867, came the United States, upon the relation of Henry Amy, by Messrs. Grant & Smith, his attorneys, and filed in the office of the clerk of said circuit court his information for a writ of mandamus against the board of supervisors of Des Moines County, Iowa, defendants, which said information is in the words and figures following, to wit:

62 In the United States circuit court for the district of Iowa, October term, 1867.

THE UNITED STATES EX REL. HENRY AMY
vs.
THE BOARD OF SUPERVISORS OF DES MOINES County, Iowa. } Petition for mandamus.

To the judges of the United States circuit court for the district of Iowa:

Henry Amy, who avers that he is a citizen of the State of New York, now comes and gives this court to be informed—

That on the 16th of May, 1867, by the judgment and consideration of

this court, on due process of law, he recovered judgment against Des Moines County for the sum of $10,586 13, and costs, taxed at $34 95, and 7% per annum interest from the date of said judgment.

That execution has been issued upon said judgment, and returned, "No property found." That the county of Des Moines has no property out of which said judgment can be made. That, by the laws of the State of Iowa, the public and private property of such corporation is exempt from execution.

63 That the business of said corporation is managed by a board of supervisors, who manage its financial affairs, cause its taxes to be levied and collected, and whose duty it is to provide for the payment of all judgments recovered against it.

That the county of Des Moines is a municipal corporation, created by & a citizen of the State of Iowa.

That said judgment was for interest on certain bonds executed by the county of Des Moines in 1854, and issued in payment of stock, in aid of the Burlington and Missouri River Railroad Company, under a vote of the majority of the electors of said county, held August 1st, 1853, the result of which vote has been entered at large on the minute book of said county; by which vote the county judge of said county was authorized to subscribe to the capital stock of the said railroad company the sum of $150,000, and issue the bonds of said county to that amount, payable in twenty years after the date thereof, bearing interest at the rate of 8% per annum, for which interest coupons were annexed to said bonds; that by the provisions of said vote and of the laws of this State,

64 it became and was the duty of the proper officers of said county of Des Moines to annually levy a tax not less than one mill on the dollar, and not exceeding one per cent. upon the valuation of the taxable property of said county, until said should be paid, and pay therewith the interest upon said bonds, and to provide for the ultimate redemption of the principal thereof when the same shall fall due.

That prior to the year A. D. 1860 such duty devolved upon the county judge of said county.

That since 1860, by force of an act of the legislature of said State of Iowa, such duty has devolved upon the board of supervisors of said county. That the interest upon said bonds has not been paid since 1859.

That it is further provided by the general laws of the State of Iowa that, when a judgment has been rendered against a civil corporation, a tax shall be levied, as early as practicable, sufficient to pay off the said judgment with interest and costs.

That the relator has made a demand upon the board of supervisors to levy a tax sufficient to pay said judgment, and although ample time has elapsed, they have refused and neglected to do so.

That the valuation of the taxable property of said county is not less than seven millions of dollars.

65 That the relator is without other adequate remedy in a court of law, and he prays that a writ of mandamus may be issued from this court, directed to the board of supervisors of Des Moines County, commanding them forthwith to levy and collect a specific tax upon the taxable property of Des Moines County sufficient to pay said judgment of $10,586 13, and costs, taxed at $34 95, and at the rate of seven per cent. per annum from the 16th day of May, A. D. 1867, and the costs of this proceeding, and, when collected, to pay and satisfy the same therewith, and that such other order may be had in the premises as justice may require.

HENRY AMY.

STATE OF IOWA, *Scott County, ss:*

I, J. Grant, on oath say that I am the relator's att'y, and that I have a personal knowledge of the facts stated in the foregoing information, and that the same are true, as I verily believe.

JAMES GRANT.

Subscribed and sworn to by J. Grant before me and in my presence this 14th day of Sept., 1867.

[L. S.]

S. F. SMITH,
Notary Public Scott County.

66 (Endorsed:) Filed October 16th, A. D. 1867.
W. G. WOODWARD, *Clerk.*

And on this day, to wit, the 16th day of October, A. D. 1867, in the October term of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Information for mandamus.

THE UNITED STATES EX REL. HENRY AMY
vs.
BOARD OF SUPERVISORS OF DES MOINES County. } Mandamus.

This cause now coming on for hearing, Grant, for the plaintiff, filed his information for a writ of mandamus, and the court doth order that an aternative writ of mandamus issue, as prayed for, returnable to the next term of this court.

On the same day, to wit, the 16th day of October, A. D. 1867, a writ of alternative mandamus issued out of said clerk's office, against said defendants in said entitled cause; which said writ is in the words and figures following, to wit:

67 The United States of America to the Board of Supervisors of Des Moines County, Iowa:

Whereas it has been represented to our circuit court of the United States for the district of Iowa—

That Henry Amy is a citizen of the State of New York, and has given this court to be informed that on the 16th day of May, A. D. 1867, by the judgment [by the judgment] and consideration of this court, on due process of law, recovered judgment against the county of Des Moines for the sum of $10,586 13, and costs taxed at $34 95, and 7% interest per annum from the date of said judgment; that execution has been issued upon said judgment, and returned "No property found."

That the county of Des Moines has no property out of which said judgment can be made. That by the laws of the State of Iowa the public and private property of such corporation is exempt from execution. That the business of said corporation is managed by a board of supervisors, who manag its financial affairs, cause its taxes to be levied and collected, and whose duty it is to provide for the

68 payment of all judgments recovered against it.

That the county of Des Moines is a municipal corporation, created by and a citizen of the State of Iowa.

That said judgment was for interest on certain bonds executed by the

county of Des Moines, in 1854, and issued in payment of stock in and aid to the Burlington & Missouri River Railroad Company, under a vote of the majority of the electors of said county, held August 1st, 1853, the result of which vote has been entered at large upon the minute book of said county, by which vote the county judge of said county was authorized to subscribe to the capital stock of the said railroad company the sum of $150,000, and issue the bonds of said county to that amount, payable in 20 years after the date thereof, bearing interest at the rate of eight per cent. per annum, for which interest coupons were annexed to said bonds. That by the provisions of said vote, and of the laws of this State, it became and was the duty of the proper officers of said county to annually levy a tax, not less than one mill on the dollar, and not exceeding one per cent. upon the valuation of the taxable property
69 of said county, until said debt should be paid, and pay therewith the interest upon said bonds, and to provide for the ultimate redemption of the principal thereof when the same should fall due.

That prior to the year A. D. 1860 such devolved upon the county judge of said county. That since 1860, by force of an act of the legislature of said State of Iowa, such duty has devolved upon the board of supervisors of said county.

That the interest upon said bonds has not been paid since 1859. That it is further provided, by the general laws of the said State of Iowa, that when a judgment has been rendered against a civil corporation a tax shall be levied as early as practicable sufficient to pay off the said judgment, with interest and costs.

That the relator has made a demand upon the board of supervisors to levy a tax sufficient to pay [sufficient to pay] said judgment, and although ample time has elapsed, they have refused and neglected to do so. That the valuation of the taxable property of said county is not less than seven millions of dollars.

That the relator is without other adequate remedy in a court of law.

70 Now, therefore, we being willing that full and speedy justice should be done in the premises, do hereby commanded you, the said Board of Supervisors of Des Moines County, Iowa, to forthwith levy and collect a specific tax upon the taxable property of Des Moines County, Iowa, sufficient to pay said judgment of $10,586 13, and costs taxed at $34 95, and interest at the rate of seven per cent. per annum from the 16th day of May, A. D. 1867, and the costs of this proceeding, and, when collected, to pay and satisfy the same therewith, and that you appear before our said circuit court, at Des Moines, at the court-house in Polk Co., on the 12th day of May, A. D. 1868, to show cause why you refuse so to do.

Witness the Hon. Salmon P. Chase, Chief Justice of our Supreme Court, and the seal of said circuit court, this 12th day of October, A. D. 1867.

[L. S.] W. G. WOODWARD, *Clerk.*

71 Endorsed as follows, to wit:

The writ of which the within is a copy came into my hands for service on the 2d day of January, A. D. 1868, and I served the same on the members of the board of supervisors of Des Moines County, Iowa, to wit, John Burkholder, John Bryson, John Ballord, Justus Clark, Fredrick Heizer, R. C. Kendall, Herman Metzer, J. C. Rankin, A. J. Smith, Benjamin Van Dyke, & William Wolverton, by reading and de-

livering to each a copy of said writ; and I read & delivered the original writ to John Ingbram, chairman of said board, in the city of Burlington, Iowa, on the 7th day of Jan'y, A. D. 1868.

GEO. W. CLARK,
U. S. Marshal Dist. of Iowa.

Marsha's fees.

Mileage, 165 miles	9 90
Service on 12	24 00
12 copies	9 00
	$42 90

72 On this day, to wit, the 14th day of May, A. D. 1868, came said defendants, by their attorney, Joshua Tracy, and filed in said clerk's office their plea in said entitled cause; which said plea is in the words and figures to wit:

THE UNITED STATES EX REL. HENRY AMY
vs.
THE BOARD OF SUPERVISORS OF DES MOINES County.

The defendants, for answer to the relator's petition for mandamus, now come and admit that the allegations and averments of said petition are substantially true as therein stated.

But defendants deny that the relator is entitled to the writ of mandamus, as prayed for in said petition, for the following reasons, to wit:

That said judgment for $10,586 13 was, as stated in the relator's petition, recovered upon coupons for interest which had accumulated upon said bonds issued by the county judge of said county to aid in the construction of the Burlington & Missouri River Railroad Company.

73 That before the rendition of said judgment, and before said suit was commenced, and before the issuing of the alternative writ of mandamus in this cause, in a certain suit in equity in the district court of the State of Iowa, in and for said Des Moines County, wherein A. W. Carpenter and other citizens and tax-payers of said Des Moines County were plaintiff, and the board of supervisors of said county and others were made defendant, it was judicially found and determined by said court that said railroad bonds, so called, including the bonds and interest due thereon held by the relator, being the same bonds upon which the relator's judgment for said sum of $10,586 13, rendered by this court, were issued by said county judge without authority of law; and that, in said equitable proceedings, so had and determined by said court, said bonds were declared null & void by the then acting board of supervisors of said county, [of said county,] and their successors in office were forever restrained and enjoined from levying, in any manner, any tax, special or otherwise, for the payment of said railroad bonds, or the interest accruing thereon. A certified copy of the decree rendered of said court in said cause, with copies of the proceedings had in

74 said cause prior to the rendition of said decree, are hereto attached, and marked Exhibit "A," and made part of this answer. That said decree is of full force, and is binding upon defendants, the same never having been in any manner vacated or annulled.

That said court had full & competent authority under such decree, and had jurisdiction of the parties thereto and the subject-matter involved in said suit; and while these defendants are at all times ready and willing to obey the orders and mandates of this honorable court, they respectfully submit to the court that if they are compelled to le'y the tax as prayed for by the relator, that, by so doing, they will violate the restrictions imposed upon them by said decree of the district court of Des Moines County, and thereby render themselves liable to be arrested and punished as for contempt of said court.

Wherefore defendants pray the court to quash the alternative writ of mandamus issued in this cause, and that defendants be discharged, &c.

The Board of Supervisors of Des Moines County,
By J. TRACY,
Their Attorney.

75 STATE OF IOWA, *Des Moines County, ss:*

Pleas before the district court of Des Moines County at a term begun & holden in said county on the first Monday, to wit, the first day of Oct., A. D. 1866, the Hon. Francis Spruger, sole judge of the first judicial district of said State, presiding.

A. W. CARPENTER, AND H. W. STARR, ELISHA Chamberlain, J. P. Sunderland, J. H. Davy, Lyman Cook, J. S. Shramm, John L. Corse, John Sawyer, Warner Miller, Erastes Chamberlain, Ja's Putnam, Nat. Irwin, John Patterson, Alex. Hillery, Jesse Hunt, Mark Foot, F. M. Brooks, Jacob Lawman, H. H. Scott, W'm Johnson, who are, for themselves and all other tax-payers of the county of Des Moines, plaintiffs,

vs.

76 THE COUNTY OF DES MOINES, THE Board of Supervisors of the county of Des Moines, W'm D. McCash, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, C. M. Garman, Jno. Inghram, R. C. Kendall, John R. Kline, John W. Orr, Ja's C. Rankin, Cha's H. Snelson, & E. Woodward, members of said board of supervisors, the Burlington and Missoury River Railroad Co., A. Rusch and Company, defendants.

Be it remembered that heretofore, to wit, on the 3d day of April, A. D. 1866, plaintiff filed in the office of the clerk of said court a petition in words & figures [& figures] following, to wit:

THE STATE OF IOWA, *Des Moines County, ss:*

A. W. CARPENTER, H. W. STARR, ELISHA Chamberlain, J. P. Sunderland, J. H. Davy, Lyman Cook, J. L. Schramm, John L. Corse, John Sawyer, Warner Miller, Erastus Chamberlain, Ja's Putman, Alex. Hillary,
77 Nat. Irwin, John Patterson, Alex.

Hellary, Jesse Hunt, Mark Foot, F. W. Brooks, Jacob Lawman, H. H. Scott, W'm Johnson, who are, for themselves and all other tax-payers of the county of Des Moines, plaintiffs,

vs.

THE COUNTY OF DES MOINES, THE BOARD OF Supervisors of the county of Des Moines, W. D. McCash, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, C. M. Garman, John Inghram, R. C. Kendall, John R. Cline, John W. Orr, Ja's C. Rankin, C. H. Snelson, & E. Woodward, members of said board of supervisors, the Burlington & Missoury River Railroad Company, A. Rusch & Co., defendants.

Petition in equitable proceedings, to the district court of said county and State:

Your petitioners most respectfully show unto the court here
78 that they are residents and citizens of said county and State, and individually are the owners of large and valuable property, both real and personal estate, and are directly and immediately interested in the financial and fiscal affairs of said county, and in the due and legal administration of affairs of said county; that your petitioners are tax-payers, and their real & personal estates aforesaid are subject to taxation, and by law all taxes legally levied by the board of supervisors of said county, for county purposes, are a perpetual lien upon said real estate.

Your petitioners further state that in August, 1853, the people of said county were induced to vote upon the question, whether the county judge of said county should issue to the Burlington and Missouri Railroad Company, a corporation organized under the laws of Iowa for the purpose of constructing & managing a railroad from Burlington westward toward the Missouri River, bonds of said county to the amount of one hundred & fifty thousand dollars, bearing not more than eight per cent. interest, and payable in twenty years, taking therefore a like
79 sum in the capital stock of said railroad company; that afterwards the county judge of said county issued to the said railroad company one hundred & fifty bonds of said county, of the denomination of $1,000, payable twenty years after date, bearing interest at the rate of eight per cent. per annum, payable annually, and made payable in the State of New York; that it was inserted & expressed in the body of said bonds that the same were issued for stock in said railroad company, and that the holder of said bonds might at any time exchange them for a similar amount of said stock at par; that the different and divers persons hereinafter mentioned, and the holders of said bonds, took and received said bonds, in contemplation of law & equity, with full notice of the purposes for which said bonds were issued.

Your petitioners further state that, as they are informed by counsel and verily believe, the said parties, dealing in and purchasers of said bonds, were bound to know what powers and authority were vested by law in the county of Des Moines; and that the holders thereof became such with full notice of the rights & powers of the said county
80 and of its officers and agents. And your petitioners aver that said county of Des Moines was and is a municipal corporation

created and organized under and by virtue of the laws of the State of Iowa, as an agent of said State, to aid in the better government of the people therein and the better security and enjoyment of the material rights of the citizen. And your petitioners charge that the said county of Des Moines had no authority to subscribe for the capital stock aforesaid, or in any manner [or in any manner] to become member of the said railroad corporation; that said county had no authority to issue its bonds for the purpose of aiding in the construction and management of said railroad company, and that all of the act and doings of the said county judge and officers in the issue and delivery of said bonds were illegal and void, and are not binding upon the said county. Your petitioners therefore state that, since the issuing of said bonds, the same have been negotiated and are now scattered over the country, and
81 are now in the hands of many and divers parties whose names are unknown to your petitioners. But petitioners charge, upon the advise of their counsel, that the said county and its officers and agents had no power or authority to issue bonds or other evidences of indebtedness which should be negotiable in its nature with the incidints of negotiability; and that all of said parties, in purchasing and becoming holders of said bonds, were bound to know the powers and authority of said county, its officers and agents, and in law and equity took the said bonds with full notice of the want of said power of aut'iority. And your petitioners aver that said bonds are now subject to all the defences they would have been in the hands of the original party, thereto, namely, the Burlington & Missoury River Railroad Company. But your petitioners charge that, notwithstanding all these facts, the said holders of said bonds are seeking in every manner to enforce said bonds and the interest warrants thereunto attached, and many of them are bringing writs against said county, particularly in the courts
82 of the United States holden in the State of Iowa; that, by reason of an unhapy disagreement as to the fundamental laws of the State of Iowa and the rights of the citizens under the organization of counties and other municipal corporations, the federal courts have heretofore rendered judgment upon, and have exercised their jurisdiction toward, the enforcement of said bonds.

And your petitioners further state that many of said bondholders are threatening to proceed by mandamus or other process, and compel the board of supervisors to levy a special tax upon the taxable property of said county for the purpose of paying the interest accruing on said bonds and any judgments which may have been rendered thereupon; and the owners of said bonds assert & claim that the taxable property is holden by species of equitable mortgage, to be enforced and foreclosed by means of levies of taxes, which said bonds and the claim and acts of the said owners' casts a cloud upon your petitioners' property and depreciates the value thereof.

83 And your petitioners further state that, in view of the decision and action had in the federal courts, the present board of supervisors have about concluded to levy taxes, and your petitioners have reason to believe, unless restrained, the said board of supervisors will, at their next regular term, or as soon thereafter as they deem legal, proceed and levy a tax upon the taxable property of said county to raise a fund to pay off the interest accrued upon said bonds. All of which petitioners charge, as they are informed by counsel, is illegal and improper, and is therefore prejudicial to petitioners' rights of property.

Your petitioners further state that the levying of a tax upon the tax-

able property of this said county is an exercise of the immediate and direct power of the government of the State of Iowa, which it is peculiarly and appropriately the province of the courts of the said State of Iowa to control and supervise and correct; and petitioners aver that this court has full and complete jurisdiction over the board of supervisors, and to determine the rights of citizens against the assumed right to levy the taxes aforesaid, and to protect them against all illegal & wrongful exercise of power.

Your petitioners further state that, at and about the time when
84 said bonds were so issued and delivered to the said Burlington and Missouri River Railroad Company, there was issued and delivered to some of the officers of said company, amounting to the said sum of $150,000, which said certificate, as petitioners are informed and believe, are still in the custody of some of said officers, and said stock still stands in the name of said county; but petitioners charge that no dividends have been declared thereupon, and that said stock is and should be held for the benefit of the said bondholders, and that said bondholders should have the benefit thereof. Your petitioners state that A. Ruch & Co. are holders of some of said bonds, as are also , and are interested in the question herein presented, and your petitioners therefore pray that the [and the] county of Des Moines, the board of supervisors, and the individual members thereof, the Burlington and Missouri River Railroad Company may be made parties defendants hereto, and be required to answer according to law and the rules of this court; and the court will issue its preliminary injunction restraining and prohibiting the said board of supervisors, as individuals and corporators, and their successors in office, from
85 levying any tax whatever upon the taxable property of said county whereby to raise or create a fund to pay said bonds or the interest thereon, or from appropriating any of the monies of the county for that purpose, and, upon the final hearing of said injunction and prohibition, be made final, perpetual, against said board of supervisors in office forever; that a receiver may be appointed to take charge of said stock, under direction of the court, to hold or dispose of the same; that all of the said bondholders, as rapidly as they can be ascertained, may be brought into court, and their rights to said stock or its proceeds adjusted and determined; that any supposed or pretended right of said county to said stock may be cut off and barred; and that said B. & M. R. R. Company may be required to account to this court for said stock and all dividends hereafter declared, and be compelled to recognize the disposition made of said stock by this court.

Your petitioners also pray for full and complete relief in all other respects, as full and complete as though specially herein prayed for.

J. C. & B. J. HALE,
Pl'ffs' Att'ys.

86 THE STATE OF IOWA, *Des Moines County:*

I, Elisha Chamberlain, on oath say that I am one of the petitioners, and have been made acquainted with the contents thereof; that the matters and things therein stated, so far as stated of my own knowledge, are true, and so far as stated upon information and belief I verily believe them to be true.

ELISHA CHAMBERLAIN.

Subscribed & sworn to by Elisha Chamberlain in my presence & before me the 5th day of April, 1866.

B. J. HALE,
Notary Public.

Endorsed: Filed April 5th, 1866.

W. GARRETT, *Clerk.*

And afterwards there was filed a notice and return in words and figures following, to wit:

87 *Notice.*

STATE OF IOWA, *Des Moines County, ss:*

To the board of supervisors of Des Moines County:

You are hereby notified that there is on file in the office of the clerk of the district court of said county a petition of A. M. Carpenter et al., claiming an injunction perpetual restraining the board of supervisors from levying any tax upon the taxable property of Des Moines County, or otherwise raising a fund to pay the interest or principal of certain bonds heretofore issued to the Burlington and Missouri River Railroad Company, and seeking other equitable relief; and that, unless you appear thereto and defend on or before noon of the second day of the next term of said district court, to be begun and holden in the city of Burlington, in said county, on the third day of April, 1866, default will be entered against you, and judgment rendered thereon.

J. C. & B. J. HALE,
Att'ys for Pl'ff.

88 STATE OF IOWA, *Des Moines Co., ss:*

This notice came into my hands April 4th, 1866, and on April 5th, 1866, I served the Burlington & Missouri River Railroad Company by reading and delivering a true copy to Charles E. Perkins, superintendent of said road, in the city of Burlington, Des Moines Co., Iowa, and on W. D. McCash, president of the board of supervisors for Des Moines County, by reading the within to him, and delivering to him a true copy thereof, in the city of Burlington, Des Moines County, Iowa, April 7th, 1866. Served E. Woodward & Jno. Inghram by reading and delivering to each a true copy of the within, in the city of Burlington, Iowa, April 11, 1866. Served Robert Kendale, by reading to him, in the city of Burlington, Iowa, copy waived, April 13th, 1866. Served the within on C. H. Suleson by reading the within to him and delivering to him a true copy, in the city of Burlington, Iowa, April 14th, 1866. Served the within on C. M. German by reading the within to him and delivering to him a true copy, in the city of Burlington, Iowa, April 16th, 1866. Served the within on W. H. Cartwright by reading the same to him, in the city of Burlington, Iowa, copy waived, May 3d, 1866. Served J. W. Orr by reading and delivering a true copy to him in Benton township; also J. C. Rankin, by reading & copy, in Huron Township, May 4, 1866; Jno.
89 R. Kline, in Franklin Tp, by reading & copy, May 5, 1866; John Bryson, by reading & copy, in Augusta Township, May 5, 1866. Justus Clark not found.

A. S. PERRY,
Sh'ff Des Moines County, Iowa.

And afterwards, to wit, on the 24th day of April, A. D. 1866, the same being the 1st day of the April term for 1866, an entry appears of record in the above-entitled cause in words and figures following, to wit:

A. W. CARPENTER ET AL.
vs.
THE COUNTY OF DES MOINES & BOARD OF Supervisors. } Injunction.

On motion of D. Rorer, att'y for the Burlington & Missouri River Railroad Company, it is ordered by the court that said defendants have sixty days to answer.

And afterwards, to wit, on the 22d day of April, A. D. 1866, the same being the 4th day of the April term for 1866, an enty appears of record in the above-entitled cause in words and figures following, to wit:

A. W. CARPENTER ET AL.
vs.
THE COUNTY OF DES MOINES & THE BOARD OF Supervisors. } Injunction.

90 Now, on this day, came on to be heard the applications of petitioners for a preliminary injunction, directed to the board of supervisors in their corperate and individual capacities, restraining and enjoining them from levying any tax upon the taxable property of said county, or from otherwise creating fund or making an appropriation of the funds of said county for the purpose of paying any bonds heretofore issued by any of the officers of said county to the Burlington & Missouri River Railroad Company, or other persons, for stock in said railroad company, or to aid in the construction thereof, or from paying any interest warrants or coupons attached thereto. And the court, being advised in the premises, now orders and directs that a writ of injunction issue, as prayed for by petitioners, upon being filed, conditioned according to law, in the sum of $20,000, to be approved by the clerk.

April 27, 1866.

Bond.

Know all men by these presents that we whose names are hereto subscribed as principals, & whose names are subscribed as sureties, are held and firmly bound unto the president of the board of supervisors, for the use and benefit of all other persons to be thereby affected, in the
91 penal sum of twenty thousand dollars, ($20,000,) for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; yet to be void if A. W. Carpenter and others, who has this day sued out a writ of injunction against the board of supervisors of Des Moines County, shall pay all the damages that may be adjudged against him and the said A. W. Carpenter & others by reason of said injunction; else to be of force.

Witness our names this first day of May, A. D. 1866.

A. W. CARPENTER.
EW'D KITTERICK.
J. H. DAVEY.
J. RULMAN.

Bond and security taken and approved by me this 2d day of May, A. D. 1866.

W'M GARRETT, *Clerk.*

Writ of injunction.

STATE OF IOWA, *Des Moines County:*

To the County of Des Moines, the Board of Supervisors of Des Moines, W. D. McCash, president, Jno. Byson, W. H. Cartwright, Justus
92 Clark, R. B. Foster, C. M. Garman, John Inghram, R. C. Kendall, Jno. R. Kline, Jno. W. Orr, James C. Rankin, C. H. Snelson, & E. Woodward, members of the board of supervisors of Des Moines County:

The County of Des Moines, the Burlington & Missouri River Railroad Company, A. Rusch & Co., are hereby enjoined and restrained as a board of supervisors, or as individuals, or as corporators, and your successors in office, from levying any tax whatever upon the taxable property of said county, whereby to raise or create a fund to pay the bonds or the interest thereon given in stock in the Burlington and Missouri River Railroad Company, or from appropriating any of the monies of the county of Des Moines for that purpose, until the order of the district court of said county can be had thereon.

Hereof fail not at your peril.

Witness William Garrett, clerk of said court, with the seal thereof hereto affixed the 2d day of May, A. D. 1866.

[SEAL.] WILLIAM GARRETT,
Clerk of said County.

93 *Sheriff's return.*

STATE OF IOWA, *Des Moines County, ss:*

This notice came into my hands May 1, 1866, and was seved as follows, by reading to the within-named persons at their places of residences:

May 3, John W. Orr,	Benton	t'p;	copy	waived.
" 3, J. C. Rankin,	Huron,	"	"	"
4, C. H. Snelson,	Washington	"	"	"
4, Jno. R. Kline,	Franklin	"	"	"
4, W. H. Cartwright,	Yellow Springs	"	"	"
4, Justus Clark not found.				
5, J. Bryson,	Augusta	"	copy	demanded.
5, R. B. Foster,	Danvile	"	"	waived.
7, C. M. Garman,	Jackson	"	"	"
7, J. Inghram,	Flint River	"	"	"
7, R. C. Kendall,	Burlington	"	"	"
7, W. D. McCosh,	"	"	"	"
7, E. Woodward,	Union	"	"	"

All in Des Moines County, Iowa.

A. S. PERRY,
Sheriff Des Moines County, Iowa,
Per W'M POLLOCK, *Deputy.*

94 And afterwards, to wit, on the 8th day of June, A. D., 1866, there was filed in the office of said clerk the answer of the Bur-

lington & Missouri River Railroad Company in words and figures following, to wit:

A. W. CARPENTER ET AL.
vs.
THE COUNTY OF DES MOINES, THE SUPERVISORS of Des Moines County, & the Burlington & Missouri River Railroad Company & others.

Answer of the Burlington & Missouri River Railroad Company.

This defendant, the Burlington & Missouri River Railroad Company, for answer says:

First. That this defendant did not at the commencement of this suit, and does not now, own, possess, or control any bonds or bond, or coupons thereof, referred to in the petition of petitioners in this suit, and has no interest whatever in any of said bonds or coupons.

Second. This defendant delivered over the capital stock of said county, and does not know in whose charge it now is, and has no manner of interest therein.

95 Third. This defendant, having disclaimed, asks to be dismissed, with costs.

DAVID RORER,
Attorny for the B. & M. R. R. Company.

STATE OF MASSACHUSETTS, *Suffolk County, ss:*

Before me, a notary public in and for said State and county, this day came John N. Denneson, who, being by me duly sworn, upon his oath says that he is the treasurer of the Burlington & Missouri River Railroad Company, and that the matters and things stated in the within answer are true, as he verily believes.

JOHN A. DENESON.

Sworn and subscribed to before me this 5th day of June, A. D. 1866, as witness my hand and notarial seal this the date aforesaid.

[L. S.] CH S B. F. ADAMS,
Notary Public.

[5-c't rev. stamp cancelled.]

96 Which said answer was marked "Filed June 8, 1866, William Garrett, Clerk."

And afterwards, to wit, on the 3d day of October, A. D. 1866, the same being the 3d day of the October term for 1866, an entry appears of record in the above-entitled cause in words and figures following, to wit:

A. W. CARPENTER ET AL.
v.
THE COUNTY OF DES MOINES & BOARD OF SUpervisors.

On motion of J. C. & B. J. Hale, solicitors for plaintiffs, it is ordered by the court that the Burlington & Missouri River Railroad Company be, and are hereby, discharged and dismissed from this suit.

And afterwards, to wit, on the 17 day of October, A. D. 1866, the same being the 15th day of the October term for 1866, an entry appears of record in the above-entitled cause in words and figures following, to wit:

A. W. CARPENTER ET AL.
vs.
THE COUNTY OF DES MOINES, THE BOARD OF
Supervisors of Des Moines County,
97 Iowa, D. McCosh, president, John Bryson, W. H. Cartwright, Justus Clark, R. B. Foster, C. M. Garman, Jno. Ingbram, R. C. Kendale, J. R. Kline, J. W. Orr, J. C. Rankin, C. H. Snelson, & E. Woodward, members of the board of supervisors of Des Moines County, Iowa, and their successors in office.

Now, on this day this cause came on to be heard, the plaintiffs appearing by J. C. & B. J. Hall, their attorneys, and the defendants, though duly served with notice of the pendency of this suit according to law, have failed to appear, plead, answer, or demur, as required by law and the rules of this court, it is ordered that a default be, and the same is hereby, entered up against said defendants.

And the cause coming on for further hearing upon the default, and the pleadings being read, and the court having seen and heard the evidence, and being fully advised in the premises, finds the equity with plaintiff, and that the allegations contained in plaintiffs' petition are true; that plaintiffs, who sue for themselves and theother property-
98 holders in said county, hold large and valuable real estate situate in said county liable to taxation; that in the year 1853, and subsequent thereto, the county judge of said county caused to be issued in the name of said Des Moines County, in payment for shares in the capital stock in the Burlington & Missouri River Railroad Company, one hundred fifty bonds, for the sum of one thousand dollars each, bearing interest at the rate ef eight per cent. per annum, payable twenty years after date, to which were attached coupons or interest warrants, in which said bonds were expressed a condition that the holders thereof might at any time exchange them for said stock; that said bonds and coupons were issued without authority of law and in violation thereof and were void, and that the holders thereof received the same with notice thereof; that the defendants, the board of supervisors of said county, were about making some arrangements concerning said bonds and coupons, and were about to levy a tax upon the estate of plaintiffs and the other citizens of said county; that sundry and divers holders of said bonds & coupons whose names are not all known, all now claiming that their said bonds are legal and are in nature of a lien upon
99 the estates of said county, and are threatening to procure and require the said board of supervisors to levy such tax, and that, by reason of such claim and threats, and the disposition of the supervisors to comply therewith, there is cast upon pl't'ff s' estates a cloud of title and lien to their prejudice and injury, and that they are entitled to relief:

It is therefore ordered, adjudged, and decreed by the court here that the injunction heretofore issued and served upon the def'ts be made perpetual; that the said defendants, the board of supervisors, and the members thereof, and their successors, be forever enjoined and restrained

from ever levying in any manner any tax, special or otherwise, for the paymen of any bonds, commonly known as railroad bonds, issued for any stock in the B. & M. R. R. Railroad Company; and they are further enjoined and restrained from in any manner creating or raising any fund for the payment of such bonds, or any interest coupons thereon.

It is further ordered, adjudged, and decreed by the court here the pl't'ffs have and recover of def'ts their costs in this behalf taxed, $27 95, and that, as to the stock and a receiver, this cause is hereby continued.

Oct. 17th, 186

FRANCIS SPRINGER, *Judge.*

100 STATE OF IOWA, *Des Moines County, ss:*

I, William Garrett, clerk of the district court within and for the county and State aforesaid, hereby certify that the foregoing is a true, correct, perfect, and complete copy of the original papers filed and record entries made in the above-entitled cause, wherein A. W. Carpenter et al. are pl't'ffs and the County of Des Moines is defendant, as true, correct, and perfect, and complete, as the same now remains on file and on record in my office.

Witness my hand with the seal of said district court hereto affixed this 11th day of May, A. D., 1868.

[SEAL.] W'M GARRETT,
Clerk District Court.

101 On this day, to wit, the 14th day of May, 1868, came the relator by his att'y, and filed in said clerk's office his demurrer to defendants' answer; which said demurrer is in words & figures following, to wit:

THE UNITED STATES EX REL HENRY AMEY
v.
THE BOARD OF SUPERVISORS OF DES MOINES County. } Demurrer.

The plaintiff demurrs to [to] all of the second section of said answer for the following reasons:

1st. Because it appears from the record of the proceedings in the State court therein set forth [it appears] that the plaintiff was no party to said proceedings, and he is not bound thereby, and the said decree is not the relief sought in this court.

2d. Because a suit in the State court by the tax-payers of said county against their own officers, in which pl't'ff was not made a party, is no bar to an action on the coupons, and no bar to the relief sought by which to enforce the [the] judgments in this court.

J. GRANT, *f'r Pl'ff.*

102 On this day, to wit, the 27th day of May, A. D. 1868, in the October term of said court, in the record and proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES EX REL. HENRY AMY
v.
BOARD SUPERVISORS OF DES MOINES COUNTY. } Mandamus.

This cause now coming on to be heard, Grant & Smith for plaintiff, &

J. Tracy for defendants, and arguments being heard on plaintiff's demurrer to the defendants' return to the alternative writ of mandamus, the demurrer is sustained, and the defendant abided by the demurrer; and the return being insufficient, it is ordered and adjudged by the court that a peremptory writ of mandamus issue, as prayed for, returnable to the next term of this court, to which term this cause continued; and the defendants are ordered & adjudged to pay the costs of this suit; and the whole tax to levied on this writ, and the writ of the U. S. ex. rel. Rusch vs. the same parties at this term, is not to exceed one per cent.; and, if any deficiency arises, the judgments are to be paid in the order of their date.

103 On this day, to wit, the 27th day of May, A. D. 1868, came the plaintiff by his att'y, and filed in said clerk's office his motion to quash the return of the alternative writ; which said motion is the words and figures following, to wit:

THE UNITED STATES EX REL. HENRY AMY
v.
THE BOARD OF SUPERVISORS OF DES MOINES County. } Motion to quash.

The plaintiff moves to quash the return in this cause, and for a peremptory writ, as prayed for—

Because the relator was no party to [to] the suit of Carpenter & others v. The Board of Supervisors of Des Moines County, and is not bound thereby.

Because the pendency of a suit in the State court, wherein the relator was no party, is no bar to the jurisdiction of this court to render the judgment and enforce it by writ of mandamus, as prayed for; the time of beginning the suit in the State court is immaterial; neither the plaintiff or any other person claiming to own said bonds was a party, and the return is no bar.

Wherefore, &c.

GRANT, *for Pl'tiff.*

104 On this day, to wit, the 8th day of June, A. D. 1868, a writ of peremptory mandamus was issued out of said clerk's office in said entitled case; which said writ is words and figures following, to wit:

The President of the United States of America to the Board of Supervisors of Des Moines County, Iowa:

Whereas it has been represented to our circuit court of the United States for the district of Iowa that Henry Amy is a citizen of the State of New York, and has given this court to be informed that, on the 16th day of May, 1867, by the judgment and consideration of this court, on due process of law, recovered judgment against Des Moines County for the sum of $10,586 13, and costs taxed at $34 95, and 7% interest per annum from the date of said judgment; that execution has been issued on said judgment and returned, "No property found;" that the county of Des Moines has no property out of which said judgment can be made; that, by the laws of the State of Iowa, the public and private property of such corporation is exempt from execution; that the business
105 of said corporation is managed by a board of supervisors, who manage its financial affairs, cause its taxes to be levied and col-

lected, and whose duty it is provide for the payment of all judgments recovered against it; that the county of Des Moines is a municipal corporation, created by, and is a citizen of, the State of Iowa; that said judgment was for interest on certain bonds executed by the county of Des Moines in 1854, and issued in payment of stock in and aid to the Burlington and Missouri River Railroad Company, under a vote of the majority of the electors of said county, held August 1, 1853, the result of which vote has been entered at large upon the minute book of said county, by which vote the county judge of said county was authorized to subscribe to the capitol stock of the said railroad company the sum of $150,000, and issue the bonds of said county to that amount, payable in twenty years after the date thereof, bearing interest at the rate of eight per cent. per annnm, for which interest coupons were annexed to said bonds; that, by the provisions of said vote and the laws of this State, it became and was the duty of the proper officers of said
county to annually levy a tax not less than one mill on the dol-
106 lar, and not exceeding one per cent. upon the valuation of the
taxable property of said county until said debt should be paid, and pay therewith the interest upon said bonds, and to provide for the ultimate redemption of the principal thereof when the same should fall due; that prior to the year A. D. 1860, such duty devolved upon the county judge of said county; that since 1860, by force of an act of the legislature of said State of Iowa, such duty has devolved on the board of supervisors of said county; that the interest upon said bonds has not been paid since 1859; that it is further provided by the general laws of the State of Iowa, that when a judgment has been rendered against a civil corporation, a tax shall be levied as early as practicable, sufficient to pay off the said judgment with interest and costs; that the relator has made a demand upon the board of supervisors to levy a tax sufficient to pay said judgment, and, although ample time has elapsed, they have refused and neglected so to do; that the valuation of the taxable property of said county is not less than seven millions of dollars; that the relator is without other adequate remedy in a court of law:

Now, therefore, we being willing that full and speedy justice
107 should be done in the premises, do hereby strictly and [an] per-
emptorily command you, the Board of Supervisors of Des Moines County, to forthwith levy and cause to be collected a specific tax upon the taxable property of Des Moines County, sufficient to pay said judgment of $10,586 13, and costs taxed at $34 95, and interest at the rate of seven per cent. per annum from the 16th day of May, A. D. 1867, and the costs of this proceeding, and, when collected, to pay and satisfy the same therewith; and make known to our circuit court, at Des Moines, at the court-house, in Polk County, on or before the second day of the next term of the circuit court of the United States for the district of Iowa, commencing on the third Tuesday of October, 1868, how you have executed this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of our Supreme Court, and the seal of said court this 8th day of June, A. D. 1868.

[L. S.] W. G. WOODWARD, *Clerk.*

108 Endorsed as follows, to wit:

The writ of which the within is a copy came into my hands for service of the 15th day of June, 1868, and I served the same on the board of supervisors of Des Moines County, as follows: On John Burkholder, John Beyson, J. W. Barnes, Justus Clark, Fredrick Heiser, R. C. Kendall, Herman Metzer, J. C. Rankin, E. Jones, Benj. Van Dyke,

and William Wolverton, by reading and giving to each a copy, and on John Ingham, chairman of said board, by reading, and giving to him the original writ, on the 7th day of September, 1868, in the city of Burlington, Iowa.

The above list includes all the members of said board.

G. W. CLARK,
U. S. Marshal Dist. of Iowa.

Marshal's fees.

Mileage	10 50
Service on 12	24 00
12 copies	24 00
	$58 50

109 On this day, to wit, Oct. 23d, A. D. 1868, came said defendants, by their attorney, and filed in said clerk's office their return to the peremptory writ of mandamus in said entitled cause; which said return is words and figures following, to wit:

UNITED STATES EX. REL. HENRY AMY
vs.
BOARD SUPERVISORS OF DES MOINES COUNTY. } Mandamus.

And now comes the Board of Supervisors of Des Moines County, served with the peremptory writ of mandamus in this cause, and cause the court to be infimed that, upon the service of said writ of mandamus, they immediately proceeded to take the necessary steps to make the levy of the special tax, as commanded by said writ, but that before the levy of said tax was made, and before the final adjournment of the September session of said board, each member thereof was arrested by order of the Hon. Francis Springer, judge of the 1st judicial district of the State of Iowa, for an alleged violation of the decree of injunction in the
110 suit of A. W. Carpenter et al. vs. The Board of Supervisors of Des Moines County; that the members of the board of supervisors were ordered by said judge to give bonds for their appearance at the next term of the district court of said county, and for the future observance of said injunction, in the penal sum of one thousand dollars each, and that said proceedings are now pending against them in the said district court of Des Moines County, certified copies of which are hereto attached and made part of this answer; that by said injunction of the State court these respondents are prohibited from levying the tax this writ commands them to levy.

These respondents, therefore, state to the court that they did not levy the tax as commanded by the honorable court for the reasons above stated; that by the non-levy of said tax no disrespect was intended to this court, nor to treat the process of this court with contempt or disrespect.

These respondents therefore pray the court to quash the said writ of mandamus, and to order the suspension of all further proceedings of the relator against them under said writ.

Board of supervisors of Des Moines County & John Ingraham, chairman,

By J. TRACY, *their Att'y.*

111 I, J. Tracy, upon oath state that I am attorney for the defendants, and as such I am authorized to make the answer for them; that I personally know the facts of the foregoing answer to be true.

J. TRACY.

Sworn to & subscribed before me this 23d day of October, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, Oct. 23d, 1868, came said relator, by his attorney, and filed in said clerk's office his motion to quash the return to the peremptory writ of mandamus in said entitled cause; which motion is in the words and figures following, to wit:

112 THE UNITED STATES EX REL. HENRY Amy *vs.* THE BOARD OF SUPERVISORS OF DES MOINES County. } Motion to quash return.

The relator moves to quash the return in this cause--

Because the defendants can make no other return to a peremptory writ than that the act required has been performed.

Because the proceedings in the State court are no bar to the obedience required to the writ, are contrary to law, not binding on the defendants, and no excuse for the non-performance of the defendants.

GRANT, *for Relators.*

On this day, to wit, the 23d day of October, A. D. 1868, in the October term of said court, in the records and proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES EX. REL. HENY AMY *v.* BOARD OF SUPERVISORS OF DES MOINES County. } Mandamus.

113 And now comes the relator, by Grant, his attorney, and moves the court to quash the return to the peremptory writ of mandamus; and the court, having heard the same, and being now sufficiently advised in the premises, sustains said motion, and order that said return be quashed and held for nought, to which ruling defendants then and there excepted.

On the hearing of said cause the following exceptions were taken and allowed by the court, and made of record herein, and are in words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

THE UNITED STATES EX. REL. HENY AMY *vs.* THE BOARD OF SUPERVISORS OF DES MOINES County. } Mandamus.

Be it remembered that on this day this cause came on for hearing upon the motion of the relator to quash the return of the respondents to

the peremptory writ of mandamus—the relator appearing by Grant & Smith, his att'ys, and the defendants appearing by their att'y, J. Tracy—which return to said writ of mandamus and motion to quash the same are in words & figures following, to wit:

114 THE UNITED STATES EX REL. HENY Amy *vs.* THE BOARD OF SUPERVISORS OF DES MOINES County. } Mandamus.

And now comes the Board of Supervisors of Des Moines County, Iowa, with the peremptory writ of mandamus in this cause, and cause this court to be informed that, upon the service of said writ of mandamus they immediately proceeded to take the necessary steps to make the levy of the special tax, as commanded by said writ, but that before the levy of said tax was made, and before the final adjournment of the September session of said board, each member thereof was arrested by order of the Hon. Francis Springer, judge of the first judicial district of the State of Iowa, for an alleged violation of the decree of injunction in the suit of A. W. Carpenter et al. vs. The Board of Supervisors of Des Moines County et al.; that the members of said board of supervisors were ordered by said judge to give bonds, for their appearance at the next term of the district court of said county and for the future observance of said injunction, in the penal sum of one thousand dollars each, and that said proceedings are now pending against them in the said dist.
115 court of Des Moines County, certified copies of which are hereto attached and made part of this answer; that by said injunction of the State court these respondents are prohibited from levying the tax this writ commands them to levy.

These respondents therefore state to the court that they did not levy the tax as commanded by the hon. court for the reasons above stated; that by the new levy of said tax no disrespect was intended to this court, nor to treat the process of this court with contempt or disrespect.

These respondents therefore pray the court to quash said writ of mandamus and relieve the supervisors of all further proceedings of the relator against them under said writ.

Board of Supervisors of Des Moines County & John Inghram, chairman,

By J. TRACY, *their Att'y.*

I, J. Tracy, upon oath state that I am att'y for def'ts in this proceeding, and as such I am authorized to make this answer for them; that I personally know the facts of the foregoing answer to be true.

J. TRACY.

Sworn to and subscribed before me this 23d day of October, A. D. 1868.

W. G. WOODWARD, *Clerk.*

116 THE UNITED STATES EX REL. HENRY Amy *vs.* BOARD SUPERVISORS OF DES MOINES COUNTY. } Motion to quash return to peremptory writ of mandamus.

The relater moves to quash the return in this cause—

Because the defendants can make no other return to a peremptory writ than that the act required has been performed.

Because the proceedings in the State court are no bar to the obedience required to the writ, are contrary to law, not binding on the defendants, and no excuse for the non-performance of the defendants.

GRANT, *f'r Pl'ff.*

Which motion of said relator to quash said return was by the court sustained. To which ruling of the court the respondents at the time of the sustaining of said motion excepted, and prays the court to allow and sign this the bill of exceptions; which is done.

SAM. F. MILLER. [SEAL.]

117 On this day, to wit, the 26th day of October, 1868, came said relator by his att'y, and filed in said clerk's office his motion for the appointment of the marshal of the district to execute the command of said writ; which motion is in the words and figures following, to wit:

THE UNITED STATES EX REL. HENRY AMY
vs.
BOARD OF SUPERVISORS OF DES MOINES County. } Mandamus.

Now comes the relator, and shews to the court by the writ issued in this cause, and a paper writing called a return thereon, that the defendants have refused to obey this writ, and the plaintiff moves the court to appoint the marshal of this district, or some suitable person, to execute the command of this writ.

On this day, to wit, the 26th day of October, A. D. 1868, in the October term (1868) of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

118 THE UNITED STATES EX REL. HENRY Amy
vs.
BOARD SUPERVISORS OF DES MOINES COUNTY. } Mandamus.—Motion to appoint marshal, &c.

This cause having been submitted to the consideration of the court on motion of plaintiff to a commissioner herein, and the court having heard the same, and being now sufficiently advised in the premises, overrule said motion, to which ruling the plaintiff then and there excepted, and the following exceptions were taken and allowed by the court, and made of record herein, and are in words and figures following, to wit:

Bill of exceptions.

United States circuit court, district of Iowa, October term, A. D. 1868.

THE UNITED STATES EX REL. HENRY AMY
vs.
BOARD SUPERVISORS OF DES MOINS COUNTY. } Mandamus.

Be it remembered that during the progress of this cause the
119 plaintiff made the following motion, to wit:

Now comes the plaintiff, and shows to the court the peremptory

writ of mandamus issued in this cause, and the defendants' return as follows:

"The President of the United States of America to the Board of Supervisors of Des Moines County, Iowa:

"Whereas it has been represented to our circuit court of the United States for the district of Iowa that Henry Amy is a citizen of the State of New York, and has given this court to be informed that, on the 16th day of May, A. D. 1867, by the judgment & consideration of this court, on due process of law, recovered judgment against Des Moines County for the sum of $10,586 13, and costs taxed at $34 95, and 7 per cent. interest per annum from the date of said judgment; that execution has been issued on said judgment, and returned, "No property found;" that the county of Des Moines has no property out of which said judgment can be made; that by the laws of the State of Iowa the public and private property of such corporation is exempt from execution; that the business of said corporation is managed by a board of supervisors,
120 who manage its financial affairs, cause its taxes to be levied and collected, and whose duty it is to provide for the payment of all judgments recovered against it; that the county of Des Moines is a municipal corporation, created by and a citizen of the State of Iowa; that said judgment was for interest on certain bonds executed by the county of Des Moines in 1854, and issued in payment of stock in and aid to the Burlington & Missouri River Railroad Company, under a vote of a majority of the electors of said county, held August 1st, 1853, the result of which vote has been entered at large upon the minute book of said county, by which vote the county judge of said county was authorized to subscribe to the capital stock of the said railroad company the sum of $150,000 and issue the bonds of said county to that amount, payable in twenty years after the date thereof, bearing interest at the rate of ten per cent. per annum, for which interest coupons were annexed to said bonds; that by the provisions of said vote and the laws of this State, it became and was the duty of the proper officers of said county to annually levy a tax not less than one mill on the dollar, and not exceeding one per cent. upon the valuation of the taxable property of said
121 county, until said debt should be paid, and pay therewith the interest on said bonds, and to provide for the ultimate redemption of the principal thereof when the same should fall due; that prior to the year A. D. 1860 such duty devolved upon the county judge of said county; that since 1860 by force of an act of the legislature of said State of Iowa, such duty has devolved on the board of supervisors of said county; that the interest upon said bonds has not been paid since 1859; that it is further provided, by the general laws of the State of Iowa, that when a judgment has been rendered against a civil corporation, a tax shall be levied as early as practicable sufficient to pay off the said judgment with interest and costs; that the relator has made a demand upon the board of supervisors to levy a tax sufficient to pay said judgment; and, although ample time has elapsed, they have refused & neglected so to do; that the valuation of the taxable property of said county is not less than seven millions of dollars; that the relator is without other adequate remedy in a court of law:

"Now, therefore, we, being willing that full and speedy justice
122 should be done in the premises, do hereby strictly and peremptorily demand you, the said Board of Supervisors of Des Moines County, Iowa, to forthwith levy and cause to be collected a specific tax upon the taxable property of Des Moines County sufficient to pay

said judgment of $10,586 13, and costs taxed at $34 95, and interest at the rate of 7 per cent. per annum from the 16th day of May, A. D. 1867, and the costs of this proceeding, and, when collected, to pay and satisfy the same therewith, and make known to our circuit court at Des Moines, at the court-house in Polk County, on or before the second day of the next term of the circuit court of the United States for the district of Iowa, commencing on the third Tuesday of October, A. D. 1868, how you have executed this writ.

"Witness the Hon. Salmon P. Chase, Chief Justice of our Supreme Court, and the seal of said circuit court, this 8th day of June, 1868.

[L. S.] "W. G. WOODWARD, *Clerk.*

123 "UNITED STATES EX REL. HENRY AMY } *vs.* BOARD SUPERVISORS OF DES MOINES COUNTY. } Mandamus.

"And now comes the Board of Supervisors of Des Moines County, served with the peremptory writ of mandamus in this cause, and cause the court to be informed that, upon the service of the writ of mandamus, they immediately proceeded to take the necessary steps to make the levy of the special tax as commanded by said writ, but that, before the levy of said tax was made, and before the final adjournment of the September session of said board, each member thereof was arrested by the order of the Hon. Francis Springer, judge of the first judicial district of the State of Iowa, for an alleged violation of the decree of injunction in the suit of A. W. Carpenter et al. vs. The Board of Supervisors of Des Moines County et al.; that the members of said board of supervisors were ordered by said judge to give bonds, for their appearance at the next term of the district court of said county, and for the future observance of said injunction, in the penal sum of one thousand dollars

124 each; and that said proceedings are now pending against [against] them in said district court of Des Moines County, certified copies of which are hereto attached and made part of this answer; that by said injunction of the State court these respondents are prohibited from levying the tax this court commands them to levy.

"These respondents therefore state to the court that they did not levy the tax, as commanded by the honorable court, for the reasons above stated; that by the non-levy of said tax no disrespect was intended to this court, nor to treat the process of this court with contempt or disrespect.

"These respondents therefore pray the court to quash said writ of mandamus, and to order the suspension of all futher proceedings of the relator against them under said writ.

"Board of Supervisors of Des Moines County, and John Ingraham, Chairman,

"By J. TRACY, *their Att'y.*

"I, J. Tracy, upon oath state that I am att'y for the defendants in this proceeding, and as such I am authorized to make this answer for them; that I personally know the facts of the foregoing answer to be true.

"J. TRACY.

"Sworn to & subscribed before me this 23 Oct., A. D. 1868.

"W. G. WOODWARD, *Clerk.*"

125 And moves the court to appoint the marshal of Iowa a

commissioner to execute the commands of said writ, which motion was overruled by the court, and the decision thereupon the plaintiff then & there excepted, and prayed the court to sign and seal this bill of exceptions, which is accordingly done, during the progress of the trial of said cause.

Oct. 26, 1868.

SAM. F. MILLER. [SEAL.]

On this day, to wit, on the 27th day of October, A. D. 1868, came said relator, by his attorney, and filed in said clerk's office, in said entitled cause, his motion for a writ of attachment; which is in the words and figures following, to wit:

THE UNITED STATES EX REL. HENRY AMY
vs.
BOARD OF SUPERVISORS OF DES MOINES County. } Mandamus.

Now comes the relator, and shows to the court, by the peremptory writ of mandamus and return thereon in this cause, that the de-
126 fendants have without sufficient cause refused to obey the command of said writ; and the relator moves that the said defendants be attached for a contempt of this court in refusing to obey the mandate of said writ.

GRANT, *for Relator.*

On this day, to wit, the 27th of October, A. D. 1868, at the October term (A. D. 1868) of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES EX REL. HENRY AMY
vs.
BOARD OF SUPERVISORS OF DES MOINES County. } Mandamus.

In this case—Grant for the relator & Tracy for respondents—on motion of the relator, it is ordered and adjudged by the court that an attachment issue from this court, returnable to the next term, (with an order to admit to bail in the sum of five hundrd dollars, with sureties,) for contempt of this court in refusing to obey the peremptory writ of mandamus heretofore issued against John Burkholder, John Beyson, J. W. Barnes, Justus Clark, Fredrick Heizer, R. C. Kndall, Her-
127 man Metzer, J. C. Rankin, E. Jones, Benj. Vandike, William Wolverton, & John Ingraham, chairman, members of the board of supervisors of Des Moines County, Iowa.

128 DISTRICT OF IOWA, *ss:*

I, George B. Corkhill, clerk of the circuit court of the United States for said district, do hereby certify the foregoing transcript from pages one (1) to sixty-eight, (68,) inclusive, to contain a full, true, & perfect copy from the records of all the proceedings of said court in said cause, wherein the United States on the relation of Henry Amy was plaintiff, and the board of supervisors of Des Moines County, Iowa, were defendants, as full, true, & perfect as the originals of the same now remain in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Des Moines, in said district, this 31st day of December, A. D. 1869.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

(Indorsement on cover:) No. 285. Henry Amy, plaintiff in error, vs J. Buckholder et al. Certiorari and return. Iowa C. C. U. S. Filed 14th February, 1870.

93

SUPREME COURT OF THE UNITED STATES.

HENRY AMY,
Plaintiff in Error,
vs.
JOHN BURKHOLDER AND OTHERS,
Defendants in Error.

From the Circuit Court of the United States for the District of Iowa.

PLAINTIFF'S BRIEF.

C. WHITAKER, *of Counsel for Pl'ff in Error.*

Globe Steam Print, Davenport.

SUPREME COURT OF THE UNITED STATES.

HENRY AMY,
Plaintiff in Error,
vs.
JOHN BURKHOLDER AND OTHERS,
Defendants in Error.

From the Circuit Court of the United States for the District of Iowa.

ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The petition alleges that the plaintiff recovered judgment against the county of Des Moines, in the Circuit Court of the United States, in May, A. D., 1867; that afterwards such proceedings were had by the plaintiff on the said judgment, that in May, A. D., 1868, a peremptory writ of mandamus was issued from the said Court, and duly served on the defendants, as Supervisors of the said county of Des Moines, commanding them to levy a specific tax sufficient to pay said judgment, interest and cost. That in September, A. D., 1868, it was the duty of the said defendants to levy said tax, as they were commanded to do by the said writ; that this the said defendants neglected to do, whereby the plaintiff was damaged to the extent of the said judgment, interest and cost.

The second count of the petition alleges the recovery of the judgment as alleged in the first count; that it was the duty of the defendants, as Supervisiors of the said county of Des Moines, for the year A. D., 1868, to levy a tax sufficient to pay said judgment, interest and cost, in accordance with

the statute of Iowa in such cases made and provided, which statute is a part of the chapter of the Code of Iowa in regard to executions, and provides as follows:

"In case no property is found on which to levy, which is not exempted by the last section, or if the judgment creditor elect not to issue execution against such corporation, he is entitled to the amount of his judgment and cost in the ordinary evidences of indebtedness issued by that corporation. And if the debtor corporation issues no script or evidences of debt, a tax must be levied as early as practicable, sufficient to pay off the judgment, with interest and costs." Section 3275. Old Code §(1896).

"A failure on the part of the officers of the corporation to comply with the requirements of the last section renders them personally responsible for the debt." Section 3276. Old Code §(1897).

The petition further alleges that the said judgment is in full force and wholly unpaid, and that the said defendants have not levied any tax to pay the same, and have wholly neglected to make any provision for the payment of the same.

The defendants answered this petition, setting up these grounds of defense:

1st. That they were not indebted to plaintiff in manner and form as alleged in his said declaration.

2d. That an injunction had been granted by the *State Court* against the Board of Supervisors of Des Moines county, restraining them from levying a tax to pay said judgment. That notwithstanding said injunction, they were proceeding in good faith, in September, 1868, to levy a tax to pay said judgment, when they were attached by the said State Court and compelled to give bonds to the same for their due obedience to the said injunction; that said bonds to answer, &c, are still in force and binding.

3d. That the Legislature of the State of Iowa in February, 1868, had repealed the statute set out in the second count of plaintiff's petition, §(3276) and had made the same retroaction.

To this answer the plaintiff demurred for the following reasons:

1st. Because the defendants set up no cause of defense in the first count of their answer.

2d. As to the matters pleaded in the second count plaintiff demurs to them for the following reasons:

1st. That the same defense was set up as a reason why the writ of mandamus referred to in plaintiff's petition should not issue, and was held insufficient by this Court, and the same cannot now be pleaded as a matter of defense in this action, and is no sufficient bar if pleaded in this cause for the first time.

2d. That the State Courts have no authority to interfere with or to stop proceedings in Federal Courts, either by injunction or otherwise. And defendants nowhere allege that plaintiff was a party to the said injunction in their answer set forth.

3d. That no demand other than that set forth in plaintiff's petition, and the alternative writ of mandamus for the levy of a specific tax to pay the judgment in said petition mentioned, was necessary.

4th. That the defendants have been commanded by this Court to levy a specific tax to pay said judgment, and that is demand sufficient.

5th. That defendants are liable if no demand has been made on them to pay said judgment.

And as to the second count of said answer for the following reasons:

1st. That the repealing of the act of the General Assembly, to which the defendants refer in said count of their answer, does not in any manner release them from any liability. And that the said defendants would still be liable if the said statute had never been passed.

2d. That the repealing of the said statute is as to this plaintiff, unconstitutional, null and void.

This demurrer was overruled in the Circuit Court, and the overruling of the same is now assigned for error in this Court.

I.

An injunction issued by a State Court is inoperative to con-

trol, or in any manner to affect process or proceedings in the Circuit Courts of the United States.

United States vs. Council of Keokuk, 6 Wallace, 520.
Riggs vs. Johnson Co. 9 Wallace, 166, 198.
Weber vs. Lee Co., 6, Wallace, 210.
McKim vs. Voorhis, 7 Cranch, 279.
United States vs. Wilson, 8 Wheat. 253.

The Courts of the United States will cause their judgments and demands to be executed, even though a State Legisture may attempt to prevent it.

United States vs. Peters, 5 Cranch, 115.

The injunction of the State Court was set up as a reason wherefore the mandamus, for the non-obedience to which this suit is brought, should not issue, and was held by the Circuit Court to be insufficient.

A State Court has no authority to interfere with or to stop proceedings in a Federal Court, nor in any manner to interfere with or to stop the enforcement of their judgments.

Ex parte Holman and others. Decided by the Supreme Court of Iowa, October 11th, 1869, but not yet reported.

Where the writ is mandatory, and commands the officer to do a particular act, and the Court issuing it has jurisdiction, it is a protection to him in all Courts.

Burk vs. Colbath, 3 Wall. 334.

The writ of mandamus commanded the defendants to do a particular act, to levy a specific tax, and under the authority of the case last quoted was a protection to them, even in the State Court, against the injunction which they have set up in their answer.

A mistake of the law cannot relieve a party from the legal consequences of his acts.

Champlin vs. Laytin, 18 Wend. 415.
Willard's Eq. Jur. Chapt. 1, Sec. 2.
The People vs. Brooks, 1 Denio, 457.

If the defendants were willing and desired, as they say, to pay the judgment of the plaintiff, they would have done so long before the writ of mandamus was granted, or the injunction from the State Court was issued. If they had not desired the interference of the State Court, they would have

executed the writ of mandamus, and called on the Court, issuing it for protection, if necessary, for they knew that the court issuing it was both able and willing to protect them.

Burk vs. Colbath, 3 Wall 334.

These defendants, as Supervisors of Des Moines county, have taken an oath to support the Constitution of the United States, (See Revision of Iowa, Section 310.) and by virtue of that constitution they were bound to obey the process issuing from the Federal Court in preference to process issuing from the State Court.

Constitution of the United States, Art. 6, and Art. 3.
Ex parte Holman—quoted above.

II.

These defendants are in law Sheriffs, and as such are liable even though they were prevented from making the money by an armed band of rebels.

It is not a good return for a Sheriff to make, that he was resisted, and therefore disabled to make execution of the writ. Or such person rescued the goods.

Com. Digest, Retorn, (D.) 6.

Rescous is not a good return upon a judicial process. Nor upon goods taken upon *fieri facias.*

Com. Digest, Rescous, (D.) 7, and cases there cited.

If rebels break into prison and release the debtors, whether in custody, or mesne, or final process, the Sheriff is answerable.

4. T. R., 789.
Com. Digest, Escape, (C.) page 592.

An officer is liable for the escape of a prisoner in custody or final process, unless caused by the act of God or the King's enemies.

2 H. B., 108.

If a prisoner be discharged out of custody by virtue of an order of court which is void, it is an escape, and the officer is liable accordingly.

Jackson vs. Smith, 5 John, 115.
Cable vs. Cooper, 15 John, 152.
Hecher vs. Jarret, 3 Binn., 404.

The Sheriff is liable if the debtor escape by reason of the deficiency of the jail, or in the case of a rescue by rebels or insurgents, however overwhelming the force.

Wheeler vs. Hambright.
9 Sargent & Rawles, 396.
Green vs. Hern, 2 Penn., 170.

Any one charged with the execution of a writ by the power whence it emanated, is liable for a neglect of duty under it.

Com. Digest, Escape, [B. 2].
2 T. R., 5.

In London there are two Sheriffs, and if one permits an escape, even without the knowledge of the other, both are liable.

10 Vin. Escape, B. pl. 18.
3 Liv., 399.

So, against all the Coroners, where the arrest is only by one.

Com. Digest, Escape, [B. 2.]
Mod. Ca., 87.

III.

The repeal of the said statute does not release them from liability.

1st. The defendants would have been liable if the said statute had never been passed.

It is a universal principle of the common law, that when an officer neglects to perform a plain duty imposed by law, and one to the performance of which *no discretion is left* to the officer, any person injured by such neglect may have his action. The cases most common in the books, are against Sheriffs and Constables, as ministerial officers of the law, and all officers whose duty is ministerial are held liable for *neglect* on the same principle. Comyn's Digest, vol. 1, pages 292, 293.

An action lies against him who neglects to do that which by law he ought to do: as if a man is bound by prescription to pay toll, and refuses to pay.

1 Rol. 106.

So if a parson is bound by prescription to find a bull and a

boar yearly for the increase of the cattle within his parish, and does not do it.

1 Rol. 109.
4 Mod. 241.
Cro. Eliz, 569.

So in every case, when an officer is instructed by the common law, or by statute, an action lies against him *for a neglect of the duty of his office.*

Holt, J., 1 Salk. 18.

I have been unable to find any case contradicting this well established principle of the common law. This principle is not limited to officers executing legal process. Such officers are liable, but their liability rests on the general principle that all officers and all persons are liable for damages resulting from their neglect to perform a duty imposed by common law. The only exception is that of an officer whose duty is judicial. So held in *Wilson vs. Mayor of New York*, 1 Denio, 595.

In *Rochester Co.* vs. *Rochester City*, 3 Com. 466, the Court says: "A good deal of obscurity has in times past rested upon this subject, arising from the incident that some duties of such corporations are judicial in their nature, while others, purely ministerial, have to be executed by them; and these duties sometimes so mingle as not to be easily distinguished from each other.

"When duties of a judicial nature are imposed upon a public officer, the due execution of which depends upon his own judgment, he is exempt from all responsibility, by action, for the motives which influenced him, and the manner in which such duties are performed. If corrupt, he may be impeached or indicted; but he cannot be prosecuted by an individual to obtain redress for the wrong which he may have done.

"But this *judicial immunity can be extended no further.*

"*When duties which are purely ministerial are cast upon officers whose chief functions are judicial, and the ministerial duty is violated, the officer, although for most purposes a judge, is still civilly responsible for such misconduct.*"

Wilson vs. the Mayor of New York, 1 Denio, 599.

Adsit vs. *Brady*, 4 Hill, 630, was an action against the Superintendent of the Erie canal for neglect of duty imposed by statute.

In this case the Court says:

"When an individual sustains an injury by the misfeasance or nonfeasance of a public officer, who acts, or omits to act, contrary to his duty, the law gives redress to the injured party by an action adapted to the nature of the case. This principle is so well settled that it is only necessary to inquire if there is anything in this case to take it out of the operation of the general rule." The defendant was held liable.

In Kendall vs. Stokes, *et. al.* 3 How. 98, the Court, citing 9 Clark & Finnelly, 251, say: "That the refusal to obey the lawful decree of a court of justice, was a wrong for which the party who had sustained an injury by it, might maintain an action, and recover damages against the wrong doer." In the case at bar the defendants have been ordered by this court to levy a certain tax. They have no discretion left; their duty is purely ministerial. This duty they have neglected to perform, thereby rendering themselves liable, according to the decision last quoted. Some of the other cases on this subject are:

Schinnotti vs. Bumpstead, 6 Tern R. 646.
Lincoln vs. Hopgood, 11 Mass. 350.
Stone vs. Augusta, 46 Maine, 127.

Any officer whose duty is ministerial and not judicial, is liable, for neglect of duty, to the party injured, to the extent of the injury.

Hays vs. Porter, 22 Maine, 371.

An intentional refusal is necessarily a wilful one.

1 Ashm. 299.
3 How. 98.

Ignorance of the law and good faith in refusing to act are no defense.

4 Bl. Com. 227. 7 Carr & P. 456.
5 Dern. & E. 618, 623. 1 Denio, 457.

Though these defendants acted in the utmost good faith in obeying the order of the State Court, it is no defense to this action. They were commanded to do a particular act; to levy the tax and pay the judgment. This they declined to do. Wilfully and knowingly, because, as they say, a State Judge had told them not to do this particular act. This ex-

cuse is no defense to this action. This identical defense was set up and held insufficient in 9 Clark & Finnelly, 251. and approved in Kendall vs. Stokes, 3 How. 98.

The members of the Board of Supervisors are *personally liable* for negligence, carelessness and official misconduct.

Wasson vs. Mitchell, 18 Iowa, 153.

2d. The common law was not abrogated by the passage of the said statute, nor by the repeal thereof. The said statutue was only cumulative.

If a statute gives a remedy in the affirmative (without a negative expressed or implied) for a matter which was actionable by the common law, the party may sue at common law, as well as upon the statute, for this does not take away the common law.

Comyn's Digest. Action [C] vol. 1, page 435, at the bottom.

As he may have trespass for spoiling his park at the common law, or an action upon the statute *de malefactoribus in parcis.*

2 Rol. 40, 49.

See also:

Almy vs. Harris, 5 John. 175.
Farmers' Turnpike Co. vs. Coventry, 11 John. 388.
Scidmore vs. Smith, 13 John. 322.

"Smith, the defendant in error, brought an action of trespass (as was stated in the return) in the court below, against the plaintiff in error, to recover damages for seducing and harboring his man servant. It was objected that the action should have been *debt*, under the fifteenth section of the "act concerning slaves and servants," (2 N. R. L.) 206 †a, but the exception was overruled, and judgment was given for the defendant in error. *Per Curiam.* The statute penalty for harboring slaves or servants is cumulative, and does not destroy the common law remedy." †a 2 R. S. 168. See, also

Edwards vs. Davis, 16 Johns. 281.

Where the law has affixed forfeitures for certain infractions thereof, or for *neglects* for not conforming to its requirements, whereby individuals are injured, they are not in consequence thereof deprived of the remedy which would exist if no penalties were prescribed.

Hays vs. Porter, 22 Maine, 376.
Barden vs. Crocker, 10 Pick. 383.

The statute which provides that male persons of the age of 18 years, and female persons of the age of 14 years, may be joined in marriage, is only cumulative, and does not abrogate the common law rule, which fixes the age of marriage consent in males at 14, and females at 12 years of age.

Goodwin vs. Thompson, 2 G. Green, 329.

A rule of common law is not repealed by implication.

Same case.

The common law is in force in this State.

O'Farrel vs. Simplot, 4 Iowa, 381.

The State vs. Twogood, 7 Iowa, 252.

If the said statute did not repeal the common law, how is it possible for the repeal of the said statute to repeal or annul the common law.

IV.

These defendants are in law "Sheriffs," and as such are liable for neglect of duty.

The term "*Sheriff*" may be extended to any person performing the duties of the sheriff, either generally or in special cases. Revision of 1860, page 6, section 29, subdivision 19.

His disobedience of the command of any such process is a contempt of the court from which it is issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby. Revision of 1860, page 64, §384, old Code, §171.

In Riggs vs. Johnson Co. 6 Wallace, 197, the Court says: "that the writ of mandamus in a case like the present, is a writ in the aid of jurisdiction which has previously attached, and that in such cases it is a process ancillary to the judgment, and it is the proper substitute for the ordinary execution.

If this is so the liabilities of him whose duty it is to execute this writ of mandamus become and are the same as the liabilities of him whose duty it is to execute an ordinary execution. That is, the Court, when it issued the writ of mandamus in the case of Amy vs. Des Moines county, thereby made the Supervisors of said county (the present defendants) sheriffs for the special purpose of executing the said writ, and

the said defendants, by the non-execution of the said writ, have become liable to the present plaintiff in the like manner and to the like extent as a sheriff would have become liable for the non-executing of an execution under the same circumstances.

As to the liability of the sheriffs for neglecting to execute an execution, or for an improper execution of process, see

Rakestraw vs. Hamilton, 14 Iowa, 147.
Shea vs. Watkins, 12 Iowa, 605.
Charles vs. Haskins, 11 Iowa, 329.
People vs. Schuyler, 4 Com. 173.

When the sheriff neglects to return the execution he is *prima facie liable* for the whole debt, and can only excuse himself by showing that the defendants in the execution *were* insolvent, or that the plaintiff himself was the cause of his not making the money on the execution.

1 Hill, 275; 10 Mass. 474; 11 Mass, 89, 90; 9 Johns, 300, 302; 17 Wend. 543.

V.

Are these defendants liable under the statute, and if so, to what amount?

1. If the repeal of the said statute is unconstitutional then the defendants are liable to the extent of the judgment, for the statute so declares, and the Courts of Iowa have so decided.

Oswald vs. Thedinger, 17 Iowa, 13,
Porter vs. Thompson, 22 Iowa, 391.

A demand has been made on the defendants to levy the tax. This demand has been made in the strongest possible manner by the command of this Court when it granted the writ of mandamus; no other demand was necessary.

It is idle to maintain that after the issuing of the mandamus, these defendants had any discretion as to whether a tax should be levied, because (1) the statute makes it their duty to levy a tax to pay judgments rendered against the county, and (2) they had been commanded by the writ of mandamus to perform this plain imperative duty.

2. Is the repeal of the said statute in violation of that clause of the constitution of the United States (art. 1, §10)

which provides that no State shall pass any bill of attainder, *expost facto* law, or law impairing the obligation of contract?

If the said statute is to be treated as a part of the remedy in force at the time of the making of the contract, that is if the holders of the bonds on which the mandamus suit was brought, had a right to look to the penalty imposed by the said statute on the officers of the said county of Des Moines as a reason why the said bonds would be paid. and as an additional security for the payment of the same, then, and in that case the repeal would be clearly unconstitutional. It is clearly established by the more recent decisions of the Supreme Court of the United States, and of most of the States, that all laws in force at the time the contract is made or entered into, form part and parcel of the contract.

Von Hoffman vs. City of Quincy, 4 Wallace, 535, and cases there cited.
Hawthorn vs. Calef, 2 Wallace, 10.

This last case was an action brought on a statute of Maine making the stockholders in a certain railroad company individually liable to the extent of their stock, under certain circumstances. A few months after the debt was contracted with the corporation, the Legislature of Maine repealed the "*individual liability*" clause of the charter.

The repeal of this clause of the charter the Supreme Court of the United States held to be unconstitutional.

The principal of the case at bar comes within that of the case last cited. When the debt was contracted and the bonds were issued, the holder of the bonds had a right to look to the officers of the county for his pay. It is true that in the case at bar the corporation is able to pay, but in point of law that makes no difference. If the debtor corporation were insolvent, and the defendants able to pay, and by being released by the act of the Legislature, the plaintiff should lose his debt, then the act of the Legislature would be clearly unconstitutional. At the time the bonds were issued the holder of them had a right to look to the obligation imposed by the statute in controversy, on the officers of the county, as a guaranty by the officers of the county of Des Moines,

that the contract of said county would be faithfully performed. This guaranty the repeal of the statute entirely takes away. It is true the plaintiff has his remedy against the county, but the constitution does not say that "no State shall destroy a contract, but that it shall not do any thing to impair the obligation of contracts." The repeal of this statute very seriously impairs the obligation of a contract, for it now leaves the plaintiff to pursue his remedy against the county only, which, to say the least of it, has thus far been a very slow and tedious means of getting his money; and suppose the defendents should elect to go to jail rather than obey the writ of mandamus, what then would the plaintiff's remedy against the county be worth? It is true that it is not likely that the defendants will go to jail and stay there for any length of time, but such a thing is possible, and then the plaintiff would never get his money. Again, suppose the collector should decline to collect the tax after it was levied in obedience to the writ of mandamus, what would be the plaintiff's remedy in that case? It is true that the repeal of the statute does not take away all remedy from the plaintiff, but thus far the remedy left has been very slow and tedious, and I can very well see how, pursuing the remedy left, it will be a long time yet before the plaintiff handles his money; whereas, under the statute, he would get his money in a very short time. What was the obligation imposed upon these defendants, when they became *supervisors* of the county of Des-Moines. It was among others to pay all judgments rendered against the county out of the county funds, and for a failure to do so to become liable to pay the judgments themselves. From this obligation the Legislature has attempted to relieve them entirely. The great principal intended to be established by the constitution was the inviolability of the obligation of contracts as the obligation existed and was reconized by the laws in force at the time the contracts were made.

Ogden vs. Sanders, 12 Wheat. 213.
State vs. Carew, 13 Richardson, [S. C.] 508.

Another class of cases which have been held to be unconstitutional, are stay and appraisement laws passed after the contract was made.

This has been done on the ground that the plaintiff's remedy should be as speedy and as adequate at the time he sues as it would have been if he had brought suit at the time the contract was made. The leading case on this subject is *Bronson* vs. *Kinzie*, 1 How. 311. Since the decision of this case, the United States courts and the different State courts with, I believe, the exception of Texas, have invariably held such law to be unconstitutional. So held in this State in *Rozier* vs. *Hale, et al.*, 10 Iowa, 470, where the Court will find a digest of all the cases on the subject decided up to that time.

Some few of the more recent cases on this subject are—

Rawley vs. Hooker, 21 Ind., 144.
Maloney vs. Fortune, 14 Iowa, 417.
Oatman vs. Bond, 15 Wis., 20.
Soutter vs. Madison, 15 Wis., 30.
Bunn vs. Gorgas, 41 Penn. State, 441.
State vs. Carew, 13 Richardson, (S. C.) 498.
Barry vs. Iseman, 14 Richardson, (S. C.) 129.
Wood vs. Wood, same vol., 148.

An act cannot govern the decision of a case, which is based upon a contract made prior to the passage of the act.

Weaver vs. Maillot, 15 La. An., 396.

As to the unconstitutionality of redemption laws as to prior contracts, see

Scoby vs. Gibson, 17 Ind., 572.
Iglehart vs. Wolfin, 20 Ind., 32.

An amendatory lien law will not save a lien—

Kinney vs. Sherman, 28 Ill., 520.

Neither can it destroy one.

Tillotson vs. Millard, 7 Minn., 513.

The legal obligation of a contract consists in the remedy given by law to enforce its performance, or make compensation for the failure of performance.

Johnson vs. Higgins, 3 Met. (Ky.) 566.

The obligation to perform a contract is coeval with the undertaking to perform it. It originates with the contract itself, and operates anterior to the time of its performance.

The remedy operates on the broken contract and enforces a pre-existing obligation.

Ogden vs. Sanders, 12 Wheat., 349, 350.

There is now, says Sedgwick, no such thing as a distinction between the remedy and the obligation of the contract. The obligation, the legal duty, the punishment or power of compelling obedience, is the remedy provided by law to enforce the contract. In this sense the remedy in force when the contract is made cannot be materially changed by law. Here the right of action against the Supervisors was complete. When the law was repealed, the duty to levy the tax was imposed, the time for its exercise had arrived, the action could have been brought against them for the neglect of duty when the repeal took effect. The plaintiff had a right to a judgment against the officers for their breach of duty which would be a lien on their estate and bind all their property individually, in addition to his right to the tax. The law gave him a double remedy, both material, both effectual for the whole debt. If taking away one-half the remedy, this right of action for a neglect of duty, the strongest possible legal remedy for neglect of duty, short of indictment, does not materially impair an obligation, what does? If the Legislature can pass this law, what law on this subject may they not pass?

The personal liability to pay a debt is the very best, the most advantageous part of the remedy for the neglect of duty, better than the public duty to enforce obedience to law by fine, which goes to the public, and imprisonment, which only affects the officers' liberty. It brings no good to the plaintiff. A personal liability, a right of action and judgment and execution on him for the debt, puts the money in the plaintiff's pocket: what remedy could possibly be more material, more effectual. If any part of the remedy is material it is this.

Again, it is admitted that the State Legislatures have the right to pass statutes of limitation, but in so doing they cannot take away a subsisting right of action, without giving the party a reasonable time after the passage of the act in which to bring his suit.

Bronson vs. Kinsie, 1 How. 311.

We obtained judgment in May 1867, in September following, it was the duty of the Supervisors to levy the tax to pay this judgment. This they did not do. Thereby rendering themselves liable under the provision of the statute in controversy. Our statute of limitations provides that actions of this class may be brought at any time, within three years after the cause of action accrued. Now if the Legislature, in February, 1868, instead of repealing the statute, had merely changed the statute of limitations so as to cut off our right of action, the act would have been clearly unconstitutional, and if they could not cut off our right of action by changing the statute of limitations how could they do the same thing in a different way, by the repeal of the statute on which this suit is brought.

The repealing of the statute was, in effect, passing a statute of limitations to take effect the moment the right of action accrued.

See on this subject

Berry vs. Ransdall, 4 Met. [Ky.] 292.
Price vs. Hopkins, 13 Mich., 318.

If this action be brought to enforce a mere inchoate right, depending on the statute alone, yet the repeal of the statute would be unconstitutional as to this plaintiff, because the Legislature gave him no time after the repeal in which to bring his action, a right to which had already accrued.

Smith vs. Packard, 12 Wis,. 371.

VI.

The only remaining question is, *what is the rule of damages?*

This question is not material on the argument of this demurrer, because if the plaintiff is entitled to nominal damages only, he must succeed on this argument.

But the question of damages may as well be considered here, once for all, and thus the necessity for a second brief at the trial will be dispensed with.

1st. If the repeal of the statute is unconstitutional and therefore void as to this plaintiff, then the defendants' liability is fixed by the statute, and they are liable to the amount of the judgment, interest and cost; for the statute so declares.

2d. This proceeding by *mandamus* to compel the defendants to perform the duty of levying a tax to satisfy these judgments, under our practice, takes the place of an ordinary execution on the judgments, and the defendants, the Supervisors, stand in the place of sheriffs and other ministerial officers, executing process to realize the amount of the judgment.

Riggs vs. Johnson Co , 6 Wallace, 197.

In an action against the Sheriff for neglecting to levy and return an execution, it appearing that the defendants, or some of them, had sufficient property out of which it might have been satisfied, held that he was liable *prima facie* for the whole amount due on the judgment, and it is no answer that the defendants are still able to pay.

Bank of Rome vs. Curtis, 1 Hill, 275.

In an action against an officer for neglect, the whole judgment is to be presumed to be lost. Evidence to the contrary, if relied on, to reduce the verdict is to be produced by the defendant. It is for the defendant to show that the judgment is of no value.

Young vs. Hosmer, 10 Mass., 89.
Kellogg vs. Manro & Brown, 9 John, 300.
Bank of Rome vs. Curtis, 1 Hill., 275.
Pardee vs. Robertson, 6 Hill., 550.

In Vermont and Illinois the measure of damages is the original debt.

Goodrich vs Starr, 18 Verm., 227.
Wheeler vs. Pettes, 21 Verm., 398.
Vilas vs. Barker, 20 Verm., 602.
Robertson vs. County Com., 5 Gillman, 559.

In Connecticut and Massachusetts the Jury may give more than the debt if the *wrong* complained of *be wilful.*

Patmer vs. Gallup, 16 Conn., 555.
Weld vs. Bartlett, 10 Mass., 470.

The most of the above cases relate to neglect or escape from *mesne* process.

The rule as to final process is that the debt or judgment is the measure of damages, and that the officer is not allowed to introduce evidence to lessen the amount as to show that

It would be a most dangerous doctrine to establish, that the acts of a ministerial officer, when done in good faith, however injurious to private rights, and supported by law, should afford no good ground for redress.

Tracy v. Swartwort, 10 Peters, 95

The refusal to obey the lawful decree of a court of justice is a wrong, for which the party who has sustained an injury by it may maintain an action, and recover damages from the wrong doer.

Ferguson v. Earl of Kinnoul.
9 Clark & Finnelly, 251 and 279.

A party had applied to a Justice of the Peace to take his examination, under the statute of Elizabeth, the statute of hue and cry; the Justice had refused to do this, whereby the party was injured. It was held that he was entitled to recover damages against the Justice for the neglect of his public duty, because he had sustained a personal injury.

Green vs. Bucklechurches, 1 Leon, 323 C. 456.

On the same principle a mayor was held liable for not taking a poll.

Sterling v. Turner, referred to in 9 Clark & Finnelly, 279.

When a public officer has a public duty to perform, and neglects or refuses to perform that duty, he is liable to the party injured to the extent of the injury.

Sutton vs. Johnston, 1 Term, 493.

An action of trespass lies for an inferior or military officer, against his superior (both being under martial law), who imprisons him for disobedience to an order, made under color but not within the scope of military authority.

Warden vs. Bailey, 4 Taunton, 67.

Why is this so? Because the superior officer has done an act which he had no right to do, by which the inferior officer has suffered an injury; and the law always gives redress to the injured party.

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